

Prairie View A&M University

Digital Commons @PVAMU

All Theses

8-1961

The Legal Aspects of Corporal Punishment in the Texas Public Schools

Willie S. Wilson

Prairie View A&M College

Follow this and additional works at: <https://digitalcommons.pvamu.edu/pvamu-theses>

Recommended Citation

Wilson, W. S. (1961). The Legal Aspects of Corporal Punishment in the Texas Public Schools. Retrieved from <https://digitalcommons.pvamu.edu/pvamu-theses/819>

This Thesis is brought to you for free and open access by Digital Commons @PVAMU. It has been accepted for inclusion in All Theses by an authorized administrator of Digital Commons @PVAMU. For more information, please contact hvkoshy@pvamu.edu.

THE LEGAL ASPECTS OF CORPORAL PUNISHMENT
IN THE TEXAS PUBLIC SCHOOLS



WILSON

1961

THE LEGAL ASPECTS OF CORPORAL PUNISHMENT
IN THE TEXAS PUBLIC SCHOOLS

A Thesis

Presented to the Graduate School
of Prairie View Agricultural and Mechanical College
Prairie View, Texas

In Partial Fulfillment of the
Requirements of the Degree of

Master of Science
in the
Graduate Division

By

Willie S. Wilson

August, 1961

THIS THESIS HAS BEEN APPROVED BY:

[Redacted]

Adviser

[Redacted]

Head of Department

August 24, 1961

Date

A C K N O W L E D G E M E N T

The writer wishes to express deep gratitude to Dr. Carl C. Weems and Dr. J. W. Echols for having contributed their time, thoughts, and helpful criticisms in the preparation of this study.

The writer also wishes to express his indebtedness to Mr. C. W. Karisch, County Attorney, Hempstead, Texas, for his helpfulness in the preparation of this study by providing the research materials employed.

W. W.

D E D I C A T I O N

The writer wishes to dedicate this study to his wife, Mrs. Mary Loyce Wilson, and his mother, Mrs. Lillie Mae Wilson, who through the years have given him courage and inspiration to complete his education.

To them, the writer is grateful and appreciative.

W. S. W.

TABLE OF CONTENTS

CHAPTER	PAGE
I. INTRODUCTION	1
Statement of the Problem.	1
Importance of the Study.	2
Delimitations of the Problem	2
The Method and Procedure	3
Definitions of Terms	3
The Organization of the Remainder of the Study	4
II. THE LEGAL BASIS OF CORPORAL PUNISHMENT	5
The Teacher and Corporal Punishment	5
The Limitations Placed on the use of Corporal Punishment	7
The Limits of the Legal Use of Corporal Punishment	9
Chapter Summary	12
III. THE TEXAS COURTS AND CORPORAL PUNISHMENT	14
The Method of Procedure	14
Decisions Favoring the Use of Corporal Punishment	14
Decisions Against the Use of Corporal Punishment	21

Chapter Summary	31
IV. SUMMARY, CONCLUSIONS, RECOMMENDATIONS AND RECOM- MENDATIONS FOR FURTHER RESEARCH.	32
Summary	32
Conclusions	32
Recommendations	33
Recommendations for Further Research.	34
BIBLIOGRAPHY	35

CHAPTER I

INTRODUCTION

The problem related to the disciplining of students is one which has been associated with schools since their early beginning in this country. The use of the rod, dunce caps and stools were an all too familiar part of the teachers' equipment for the teaching of children and the maintenance of good order. In recent years, the pragmatic philosophy with its emphasis on psychology, with frequent court cases against teachers included, have caused considerable concern in educational circles over the proper procedure which should be followed for the maintenance of good order. The question of whether schools should continue to use corporal punishment for disciplinary purposes was the major concern of this paper.

I. THE PROBLEM

Statement of the Problem: It was the purpose of this study to review a number of court cases as a means of determining what the attitude of the court is in Texas with regard to the use of corporal punishment by teachers. With regard to this study, answers to the following questions were sought:

What legal provisions exist in Texas with regard to the use of Corporal Punishment by teachers?

What attitude have the courts in the United States generally taken regarding the use of corporal punishment?

What limitations, if any, have been established in Texas on the use of corporal punishment?

It was believed that, should some particular pattern exhibit itself from cases where teachers have been brought before the courts, it would be possible to establish certain policies with regard to the use of corporal punishment in the Texas Public Schools.

Importance of the Study: The maintenance of good order in the classroom is an important factor if the educational process is to proceed uninterrupted. It may also be indicated that good behavior must also be taught if the rights of other individuals are to be respected in a democratic society.

Through the years, and to the present time, teachers have found themselves involved in various types of suits in courts resulting from their efforts to perform their duties in an orderly atmosphere. This study assumes importance as it attempts to determine the extent to which corporal punishment may be employed by teachers thereby permitting a degree of protection from the displeasure of parents and unhappy students.

Delimitations of the Problem: The court cases with which this study was concerned were those which have been tried in the courts of Texas.

A second delimitation was the result of the unavailability of sources for recent cases which have been before the courts of Texas where corporal punishment was involved between teachers and students.

II. THE METHOD AND PROCEDURE

The method employed in this study included a review of the literature to determine the legality of corporal punishment in Texas as compared with other states in this country. An effort was also made to determine, where possible, the attitude of the courts in general in the United States, toward the problem of corporal punishment.

An effort was then made to review court cases found in legal publications in Texas for the purpose of critical analysis, to determine whether any definite patterns existed in reaching decisions on the use of corporal punishment.

III. DEFINITIONS OF TERMS

Appellant. The party who appeals the decision of a lower court to a higher court or who takes an appeal from one judicial or administrative body to another, for example, a teacher who appeals dismissal by a local school authority to a higher authority.¹

Appellee. One against whom an appeal is taken; the respondent; the one making an answer in a court action.²

Defendant. The party against whom an action is brought in a court of law; one summoned and called upon to answer in an action.³

¹Carter V. Good, Dictionary of Education (New York: McGraw-Hill Book Company, Inc., 1945), p. 33.

²Ibid., p. 33.

³Isaac K. Funk and Wagnalls, New Standard Dictionary of the English Language (New York: Funk and Wagnalls Company, 1958), p. 170.

Assault. An unlawful attempt or offer, with force and violence, to do a bodily injury to another. An assault may be complete without touching the person of one assaulted, as by lifting a cane, clenching the fist, or pointing a gun.⁴

Corporal Punishment. The act of inflicting bodily punishment. The theory or practice of controlling pupils through reliance or emphasis on the direct consequences of specific acts.⁵

IV. THE ORGANIZATION OF THE REMAINDER OF THE STUDY

Chapter II includes a review of the literature for the purpose of comparing the legal status of corporal punishment in Texas with that of other states of this country.

Chapter III includes the presentation and analysis of the data.

Chapter IV includes the summary, conclusions and recommendations, plus recommendations for further research.

⁴Ibid., p. 170.

⁵Good, op. cit., p. 431.

CHAPTER II

THE LEGAL BASIS OF CORPORAL PUNISHMENT

The use of corporal punishment has been one of the most widely used methods teachers have employed for the maintenance of some semblance of orderliness in the American schools. However, recently, a number of instances have occurred where teachers have been charged with misconduct in the administration of corporal punishment, and numerous decisions have been reached in the courts both for and against the teachers involved. It is, therefore, possible that before any effort is made to determine the attitude of the courts toward such practices, an effort should first be made to determine the legality of such practices in the course of educating the child.

The Teacher and Corporal Punishment

According to Edwards, the laws in general have provided the teacher with the means necessary for the administration of corporal punishment where such seemed advisable. Edwards has pointed out that:

The courts all agree that a certain teacher to a certain extent, stands in loco parentis with respect to corporal punishment of pupils. By the act of sending a child to school, the parent delegates to the teacher the authority to discipline the pupil for all offenses against the good order and effective conduct of the school.¹

¹Newton Edwards, The Courts and The Public Schools (Chicago: The University of Chicago Press, 1957), p. 610.

This would seem to suggest that wherever and whenever necessary, the teacher has the legal right to administer corporal punishment to any child in the maintenance of good order, and by virtue of this fact, the use of corporal punishment, in and of itself, should not be considered the basis for charging a teacher with involvement in an illegal act.

The Corpus Juris of Texas has indicated that:

As a general rule, a school teacher to a limited extent at least, stands ~~in loco parentis to pupils under his~~ charge and may exercise such powers of control, restraint and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education, subject to such limitations and probabilities as may be defined by legislative enactment. If nothing unreasonable is demanded he has the right to direct how and when each pupil shall demand himself. As a general rule a school teacher, so far as it may be reasonably necessary to the maintenance of the discipline with reasonable rules and regulations, may inflict corporal punishment upon a pupil for insubordinate disobedience or other misconduct.²

In keeping with this general position, the State of Texas has also provided the teacher the right to employ violence in the maintenance of good order.

The Public School Law Bulletin has indicated that:

Violence used to the person does not amount to an assault or battery in the following case: In the exercising of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

Where violence is permitted to effect a lawful purpose, only that degree of force must be used which is

²Texas, Texas Juris Prudence (Texas: Volume 37B, Article 233), pp. 416-418.

necessary to effect some purpose.³

This seemed to indicate that Texas also grants, by law, the right of teachers to use corporal punishment in providing restraint or correction when applied to its students.

The Limitations Placed on the Use of Corporal Punishment

The law which existed granting teachers the right to use corporal punishment did not appear to place limitations upon the extent of its use. However, a review of the literature and court cases seemed to indicate that at least in the operation of the law, limits existed.

Hamilton and Mort have attempted to clarify the situation by stating that:

For purposes of enforcing discipline in the school, the teacher stands in loco parentis, and may administer reasonable corporal punishment in order to enforce reasonable rules. The punishment must not be inflicted with such force or in such a manner as to cause it to be cruel or excessive. It must be in proportion to the gravity of the offense and the ability of the child to bear it. Punishment which may be reasonable for some people may be entirely unreasonable for others and it is impossible to determine abstractly where legal and reasonable punishment leaves off and the unreasonable and illegal begins.⁴

Hamilton and Mort have stated further that:

The teacher must be left very wide discretion in the inflicting of corporal punishment and the case of abuse, malice or obviously unreasonable punishment must be established before it will be held that the teacher has

³Leon Graham, Public School Law Bulletin (Austin: Texas Education Agency, Bulletin 587, 1956), p. 493.

⁴Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Chicago: The Foundation Press, Inc., 1941), pp. 472-473.

transcended his authority.⁵

As was true in regard to the laws permitting corporal punishment, indefiniteness seemed to exist covering the extent to which corporal punishment might be used. It was clearly pointed out that different degrees of violence was permitted, but what might be considered legal in one case could possibly be considered illegal in another. This suggested that no clearly definable limits could be placed on the use of corporal punishment, and that each case would have to be determined individually.

The penal code of Texas, with regard to this point has indicated that: "The teacher is clothed with discretionary authority to punish refractory pupils and is not liable for its exercise unless in an excessive or malicious manner."⁶

Remmlein has pointed out that some interpretation of the law has been indicated:

The infliction of corporal punishment by a teacher is largely within his discretion, but he must exercise sound discretion and judgment in determining the necessity for corporal punishment and the reasonableness thereof, under the varying circumstances of each particular case, and must adapt the punishment to the nature of the offense, and to the age and mental condition and personal attributes of the offending pupil, using an instrument suitable to the purpose and considering the circumstances and conditions of the particular offense and pupil. The punishment must not be inflicted with such force or in such manner as to cause it to be cruel or excessive, or wanton or malicious.⁷

⁵Ibid., p. 473.

⁶Texas, Vernons Penal Code (Texas: Volume 2, Article 1142), p. 682.

⁷Madaline K. Remmlein, The Law of Local Public Administration (New York: McGraw-Hill Book Company, Inc., 1953), p. 210.

The courts of Texas also seemed to agree with the extents and limitations as pointed out above. This seemed to further indicate that limitations also exist in Texas with regard to the extent of punishment permitted under the law and even though the limits have not been clearly definable, such limits do exist.

The Limits of the Legal Use of Corporal Punishment

Hamilton and Mort have suggested what was considered to be one of the important points in the establishment of what might be considered as limitations, in the use of corporal punishment.

They stated that:

If the punishment is determined to be unreasonable, the teacher may be held liable in a criminal prosecution for assault and battery and in a civil action for damages, especially if the punishment inflicted permanently injures the pupil or the pupil dies as a result of the punishment, the teacher may be guilty of manslaughter, and possibly murder, depending on the circumstances of the case. The teacher may not be held liable for mere mistakes in judgement in the infliction of punishment.⁸

Two possibly conflicting considerations appeared as the result of the above. It was possible to observe that, in extreme cases, where corporal punishment was involved, the teacher could be held liable for the damages inflicted. It also seemed possible that where severe damage was inflicted and it was due to some misjudgement and not other causes, the teacher might not be held accountable for the results. This seemed to indicate that possibly the damage inflicted by the use of corporal punishment was not necessarily a

⁸Hamilton and Mort, op. cit., pp. 472-473.

cause for rendering against a teacher.

The Supreme Court of North Carolina has presented what could be an important factor in the determination of whether punishment is excessive or not. They have stated that:

The line which separates moderate correction from immoderate punishment can only be ascertained by reference to general principles. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limb, or health or shall disfigure the child may not be pronounced in itself immoderate as not only being unnecessary for, but inconsistent with the purpose correction is authorized. But any correction however severe which produces pain only, and no permanent illness, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare. We hold, therefore, that it may be laid down as a general rule, that teachers do not exceed the limits of it when they inflict temporary pain.⁹

Edwards has also pointed out factors which could have considerable influence in determining the legality or illegality of corporal punishment. He has indicated that:

When the correction administered is not in itself immoderate, and therefore, beyond the authority of the teacher, its legality or illegality must depend entirely, we think, on the *quo animo* with which it was administered. Within the sphere of his authority, the master is the judge when correction is required, and of the degree of correction necessary and like all others interested with a discretion, he cannot be made penally responsible for an error of judgement, but only for wickedness of purpose. The best and wisest of mortals are weak and erring creatures and in the exercise of functions in which their judgement is to be the guide, cannot be rightfully required to engage for more than honesty of purpose and diligence of execution.¹⁰

⁹Edwards, op. cit., p. 577.

¹⁰Ibid., p. 577.

Edwards stated further that:

The judgement of the teacher should be presumably correct because he is the judge, and also because of the difficulty of proving the offense, or accumulation of offenses, that call for correction of known peculiar temperament, disposition and habits of the individual corrected, and of exhibiting the various milder means that may have been ineffectually used before correction was resorted to. But the master may be punishable when he does not transcend the power granted if he grossly abuses them. If he uses his authority as a cover for malice and under pretense of administering correction, gratifying his own bad passion, the mask of the judge shall be taken off, and he will stand amendable to justice as an individual not vested with judicial power.¹¹

The above citation seemed to indicate that the degree or extent of the punishment inflicted on a student by the teacher may not be the sole determining factor as to whether the action was legal or not. It was possible to assume that even though punishment was not considered excessive, if the purpose for which the punishment was inflicted was illegal, then the teacher could be held liable for the act committed. This would seem to suggest that, not only is the teacher held liable for cruel and excessive punishment, but also his attitude at the time the punishment was inflicted.

The courts of Texas appeared to concur with regard to this particular view point. The following interpretation was found in the Texas Juris Prudence with regard to this issue:

Moderate punishment may be inflicted on a pupil by a school teacher when necessary to enforce discipline. However, if the punishment is immoderate or malicious or is inflicted for the purpose of revenge, the teacher is guilty of an assault for which he is criminally as well as civilly

¹¹ Ibid., p. 577.

liable. Immoderate correction or violence upon a scholar can never be justified by rules of the school and if the pupil believes, and has reasonable grounds for believing that the teacher is chastising him, not for a violation of the rules of the school, then he may defend himself. But there is no right of defense when there is no basis for belief that the teacher is exceeding his rights.¹²

Another problem with which this study was concerned was that related to the place of punishment of the child. According to Texas Juris Prudence:

A teacher may take a pupil off the school grounds for the purpose of chastisement, and the fact that an infraction of school rules took place away from the schoolhouse does not deprive the teacher of the right to punish the pupil. Within the meaning of the law authorizing moderate punishment of a pupil for infringement of school regulations, the teacher stands in loco parentis to the pupil, by reason of his frequent and close association with the pupil.¹³

This seemed to indicate that not only was a teacher authorized to administer punishment on the school grounds, but also off the school grounds. Also that, even though a pupil breaks a rule away from school, he was still subject to punishment by the teacher.

Chapter Summary

It was indicated by law that a teacher stands in loco parentis, and has the right to inflict corporal punishment upon a student for breaking reasonable rules of the school. It was also indicated that the teacher must keep the punishment moderate, and in proportion to the offense committed. It was further found that a teacher must use

¹²Texas Juris Prudence, op. cit., p. 418.

¹³Ibid., p. 418.

good judgement in the administering of corporal punishment, and that the punishment must be given without malice.

It was noted further that a teacher has the right to administer corporal punishment upon a pupil for breaking rules of the school grounds. It was also indicated by the laws in general that teachers have the right to administer corporal punishment upon a pupil for breaking reasonable rules of the school. It seemed that both the laws of Texas and the laws in general were in general agreement that a teacher stands in loco parentis, and has the right to inflict moderate punishment upon a student for breaking reasonable rules of the school.

It was indicated further by the laws of Texas, and the laws in general that the right of the teacher to administer corporal punishment was not limited to the classroom or the school grounds during the hours of the school day, but that the teacher had the same right to correct students off the school grounds, and after the hours of the school day that he had during the hours of school.

It was felt by these factors that a teacher could be reasonably safe in administering corporal punishment so long as he used good judgement, and it was done without malice, and in a moderate manner.

CHAPTER III

THE TEXAS COURTS AND CORPORAL PUNISHMENT

The Method of Procedure

The purpose of the study was to determine the attitude of the courts of Texas toward the use of corporal punishment as a method for disciplinary purposes, when employed by teachers in the Texas Public Schools.

The procedure employed in the study involved the selection and review of a number of cases which have been brought before the courts of Texas against teachers as the result of the use of corporal punishment. It was believed that the procedure involved would suggest the attitude of the courts of Texas toward the use of corporal punishment by teachers in the schools of Texas.

Decisions Favoring the Use of Corporal Punishment

The digests of court cases in Texas which have involved teachers, where corporal punishment has been used, have generally included both decisions in favor of teachers as well as decisions against them. One of the cases which was decided in favor of the teacher was that of Hutton vs. the State of Texas.

In this particular case, charges were filed against the teacher for assault and battery for whipping one of a group of

boys who had been accused of fighting. The facts in the case indicated that the boy, W. Z. Nugent, nine years of age, was a student in the teachers' school. The boy had been fighting with other boys, but it had occurred away from the school house, and not during school hours. Among the other rules of the school, there was one which prohibited students from fighting. When it was brought to the attention of the teacher that this pupil and others had been fighting, the teacher punished all involved for the violation of the rule by whipping them. The pupil, W. Z. Nugent, was whipped with a switch which was considered to be of a reasonable size, and was given about nine licks on the legs, inflicting no severe bruises or other serious injury.¹

The decision of the court was that:

Reasonable chastisement inflicted by a school teacher upon a pupil for the violation of a rule of the school, even though the violation did not occur at the school house, not during school hours, does not under the law of the state constitute assault.²

The court also stated that:

Our law wisely provides that the exercise of moderate restraint or correction by a teacher over a scholar is legal, and does not constitute an assault and battery. It was merely an ordinary whipping with a small switch, and such should be more common among parents and teachers. That the punishment was inflicted for an infraction of a rule of the school, which infraction was committed away from the school house, and not during school hours, did not deprive the teacher of the legal right to punish the pupil for each infraction.³

¹Texas Decisions, Southwestern Reporter (St. Paul: Vol. V, August 8, December 26, 1887, West Publishing Co., 1887), pp. 122-123.

²Ibid., pp. 122-123.

³Ibid., p. 123.

It was possible to observe several facts which may have influenced the decision of the court. First, the courts did not consider it illegal for the teacher to punish the child for the violation of a school regulation, even though the infraction did not occur on the school grounds or during school hours. It was also noted that the instrument employed for the punishment was a switch of reasonable size, and the amount of punishment did not seem excessive. The facts in the case, also, did not seem to indicate that the purpose for the punishment was for any reason other than the infraction of a reasonable rule of the school.

It seemed reasonable to assume that where these types of conditions existed with regard to the use of corporal punishment, teachers might reasonably expect, if they were carried to court, the attitude of the court to be favorable.

In still another case which was decided in favor of the teacher was that of Stephen vs. the State of Texas.

In this particular case, charges were filed against the teacher for assault and battery for whipping one of a group of boys who had been accused of writing a note which the teacher did not approve of, and upon discovering who wrote the note, the teacher administered corporal punishment. The facts in this case were that the defendant, A. J. Stephen, 29 years of age, was a teacher of the Valley Spring Public free school, in Llano County; and Willie Thompson was a pupil in the school, about 12 years of age. On October 11th, during school hours, Thompson was discovered by the defendant reading with

Bourland, another pupil, an indecent note about one of the girls in the school.

There was a girl about 14 years old by the name of Ada Jester, who was also a pupil in the school, and the only pupil in the school whose name was Ada. When the defendant saw Thompson and Bourland looking at the note, he caused it to be brought to him, and instituted an inquiry to ascertain the author.

At recess, Willie Thompson, Wade Hampton, and Jimmie Bourland were kept in by the defendant for the purpose of ascertaining who was guilty of writing the note. Willie Thompson said he picked the note up from the floor, and that he saw Wade Hampton writing something. Jimmie Bourland said the first time he saw the note Willie Thompson had it in his hand. Jimmie Bourland was sitting in school immediately behind Willie Thompson and Wade Hampton was sitting just across the aisle, opposite Willie Thompson. All three boys denied writing the note. No further investigation was made until time to dismiss school for the day, when the girls were all dismissed, and the boys were required to remain.

The boys who occupied seats near where the note was first seen were instructed to take their tablets and pencils and to write at the defendant's dictation, the words, "and a kid," and "Wade Hampton," and the information of the letters in the words so written by Willie Thompson were exactly similar to the information of the letters in the corresponding words in the note, and spelled alike. The defendant, after having satisfied himself that Willie Thompson

wrote the note, caused one of the pupils to go out and bring in two switches. The boy sent out for the switches brought in two green mesquite switches, and the defendant, with one of the switches, proceeded to whip Willie Thompson on the legs.

After three or four strokes the first switch broke and the defendant laid the stub down and took the other switch, and finished the chastisement, striking Willie Thompson on the legs, in all twenty-seven licks on the legs. Afterwhich he walked to the window and returned and struck Willie Thompson six times more over the shoulder. As the result of this whipping, the pupil, Willie Thompson, had striped, bruised and blue places on him just below the hip nearly down to the ankles, but the strokes across the shoulders left no marks. As a result of this whipping the teacher was brought into court, and charged with assault and battery.⁴

The court stated that according to the Penal Code, Article 593, which stated that:

Violence used to the person does not amount to an assault or battery in the following cases: (1) In the exercise of the right of moderate restraint or correction given by law to the scholar.

Under the provision of this article, the law confides in the teacher the discretionary power to punish pupils, and exonerates him from punishment unless the whipping is excessive or malicious.⁵

The court felt that there was nothing in the evidence to indicate that such was the case here. It was a presumption in favor of the appellant that, in correcting the pupil, he did so in the

⁴Ibid., pp. 122-123.

⁵Ibid., pp. 122-123.

exercise and within the bounds of lawful authority.

The court, in this case, seemed to be in agreement with the action of the teacher. It was felt that the teacher exercised his rights, and did not exceed his authority. With this attitude the court found the defendant not guilty of assault or battery.⁶

In still another case, Pendergast vs. Masterson, charges were filed against the superintendent for assault and battery for whipping one of the boys for an infraction of a rule of the school.

In this particular case, the punishment was not administered by a teacher, but by a superintendent acting in that capacity. It seemed to appear that according to the laws of Texas, and the laws in general, that the teacher is granted the right to administer corporal punishment, but this right was not spelled out for the superintendent or other school officials. The facts in this case were that the appellant was a pupil in the Marshall City Schools of which the appellee was the superintendent. The city of Marshall was incorporated by a special act of the Legislature approved February 12, 1909. The city was by the act (Section 183), made a "separate and independent school district," its schools to be "under the management and control of a school board," which was authorized to adopt such rules, regulations and by laws as it deemed proper as to all matters pertaining to the powers and duties of said board, the officers therefore, and of the superintendent, principal

⁶Ibid., p. 123.

teachers, pupils, janitors and employees of said board and may adapt generally such rules as will subserve the efficient and perfect management of the said public free schools.⁷

The court stated that:

Schools and school districts 176--right of the teacher to inflict corporal punishment. Statue under Penal Code 1911--Article 1014, providing that violence to the person does not amount to an assault and battery when employed in the exercise of the right of moderate restraint or correction given by law to the teacher over the scholar, a teacher may lawfully inflict on a pupil who has violated the rules and regulations of his school, corporal punishment by chastising him in a moderate and humane manner.⁸

The court stated further that:

The superintendent of schools of the city of Marshall, incorporated by special acts 31st Leg. C6, was not a teacher, within Penal Code 1911, Article 101st, providing that violence to the person does not amount to an assault or battery when employed in the exercise of the right of moderate restraint or correction given by law to the teacher over the scholar; the duty to maintain order and discipline in the schools devolved on the teachers, not on the superintendent, and the power to inflict corporal punishment on pupils was conferred on the teachers, not on the superintendent a "teacher", within the statual, being one who for the time being is loco parentis to the pupil, and who can reasonably be expected to judge the pupil's conduct and measure punishment intelligently.⁹

The appeal was from a judgement in appellee's favor. The case was tried in the court on the theory that it was lawful for

⁷Texas Decisions, Southwestern Reporters (St. Paul, Minn: Vol. 196, July, 1917 to January, 1918, West Publishing Company, 1918), p. 198.

⁸Ibid., p. 198.

⁹Ibid., p. 198.

appellee, as superintendent of the Marshall City Schools, if it reasonably appeared to him that appellant had violated the rules and regulations of these schools, to administer corporal punishment in a moderate and humane manner. Whether the theory was a correct one or not was to be determined. If the superintendent of such schools was a "teacher" therein within the meaning of the law; for to enforce a compliance with the reasonable rules in such schools, a teacher may lawfully inflict such punishment on a pupil.¹⁰

It appeared from looking at the reaction of the courts in the different cases that a teacher had the right to administer corporal punishment so long as it was kept moderate. It was also felt that the teacher was responsible for using good judgement in dealing with disciplinary problems.

The court held that in this case the superintendent was within his rights as an administrator in administering corporal punishment, also the superintendent was acting in the position of a teacher and as a result enjoyed the same rights as that of a teacher.

Decisions Against The Use of Corporal Punishment

The digests of court cases in Texas have also included cases which have involved teachers, where corporal punishment has

¹⁰Ibid., p. 198.

been used illegally. One of the cases which was decided against the teacher was that of Harwell vs. the State of Texas.

In this particular case charges were filed against the teacher for assault and battery for whipping one of the boys for truancy.

The facts are that the boy, James P. Morrow, twelve years of age, was a student in the teachers school. The boy had been organizing a "Tom Sawyers Game". When it was brought to the attention of the teacher, the teacher punished the boy with corporal punishment.

The pupil, James P. Morrow, was whipped with a board about 18 inches long, about two inches wide, about one-eighth of an inch thick; that the teacher broke the board while whipping the boy, and then he doubled the board and continued to whip the boy, striking him about eleven licks, causing blue places on his hips and legs which lasted for about a week. The boy was wearing overalls and heavy underwear. There were three bruised places on the boy's body of about two inches wide from which oozed blood, though it did not come entirely but nearly through the clothing. The boy could not sit down straight in an arm chair, but had to slip down on his back, for about a week or ten days.

The father of the boy testified that he examined the boy on the night after the whipping took place; that there were blue places on his son's legs and hips, that there were four or five bruised places upon the hips and the upper part of the boys legs, and they were about two to three inches long, and one or two inches wide, and

that the flesh was beaten up very badly.

The mother of the boy testified that she examined the boy's bruises; that he complained of them for about a week or ten days; that after that time they disappeared.¹¹

The decision of the court was that:

There are no bill of exceptions nor complaint for the ruling of the trial court. The only question presented is that sufficiency of the evidence. The question seem to be one purely of facts. We are prepared to say that the punishment inflicted did excede the bounds of reasonable chasetisement.¹²

The court also stated that:

Evidence held to sustain conviction of a school teacher for assault and battery, consisting of excessive whipping of a pupil, James P. Morrow, the offense is assault; punishment fixed at a fine of \$25.00.¹³

It was possible to observe several factors in this particular case which may have influenced the decision of the court. First, the court did consider it illegal for the teacher to inflict immoderate punishment. It was also noted that the type of instrument employed for the punishment was a board 18 inches long, about two inches wide, and about one-eighth of an inch thick. It was also pointed out that the instrument left bruised places, which caused severe soreness and the loss of some blood. It was also indicated that as a result of this punishment, the pupil was left in pain for about a week or ten days.

¹¹Ibid., p. 198.

¹²Ibid., p. 198.

¹³Ibid., p. 198.

It seemed reasonable to also assume that, where these types of conditions existed with regard to the use of corporal punishment, teachers if they were carried to court, the attitude of the court would be unfavorable.

The case of Harris vs. the State of Texas was a rehearing from a trial held on March 27, 1918. In the previous trial, the defendant was convicted of aggravated assault upon a pupil by using what the court found to be unreasonable punishment.

A rehearing was requested on June 5, 1918, and was to be heard by the court of criminal appeals of Texas. The facts that appellant was a teacher in one of the public schools of Houston, Texas and the alleged injured party was one of the pupils in the school. That appellant gave Max Larriew, a boy between 13 and 14 years of age a whipping. The boy, according to the testimony of appellant, had been unruly at a previous time; on the occasion in question, having left his seat several times, and disturbed the class and was told that if he did so again, she would whip him.¹⁴

She subsequently found him on the floor under his desk; he claimed he was looking for his pencil, which she said she thought he had thrown on the floor as an excuse. She undertook to whip him with a leather strap about one inch wide and 14 inches long. He resisted and struggled and Miss Johnson, another teacher, came to her assistance. He got on a stairway and she pulled him down to prevent injury and took him to the principal's room, while the

¹⁴Texas Decisions, Southwestern Reporter (St. Paul: Vol. 294-298, May to July, 1927, West Publishing Company, 1927), p. 108.

principal was holding him, she hit him several times with a strap about two inches wide and 14 inches long. She said she struck him about 25 licks altogether. She said she had no ill will or malice toward him, or intent to injure; did not know he was hurt; only used a strap that was provided by the school authorities. She left him in the principal's office, and that official said he hit him five or six times with a strap after appellant left. She testified that she had heard him tell Miss Johnson that she was a liar; that he did not misbehave.¹⁵

The trial took place on the 12th day of April; the incident happened on the 4th day of the same month. The assistant district attorney testified that the boy was brought to his office on the evening of April 4th; and that he stripped him to his waist. "He was marked all over his back and arms; blood coming to the surface in a number of places. I did not count them, but there were such marks and bruises in approximately 40 to 45 places."¹⁶

The court stated that:

Vernon's Ann. Penal Code 1918, Article 1014, requires that punishment of a pupil by a teacher be moderate, but what is moderate punishment in a given case, is to a large extent a question of facts in prosecution of a school teacher for aggravated assault on a pupil, but his statement will not be conclusive against other evidence tending to contradict it. Whether punishment of a pupil was excessive in a question of facts, or a mixed involving fact. Evidence held sufficient to sustain a conviction of aggravated assault by a school teacher by reason of the manner of punishment of a pupil.¹⁷

¹⁵Ibid., p. 108.

¹⁶Ibid., p. 108.

¹⁷Ibid., p. 108.

The boy, Max, said he did not misbehave; that he did not hear Miss Harris tell him that she would whip him if he left his seat; that he dropped his pencil and got down to get it and that he resisted the whipping and tried to escape because he had not misbehaved; that appellant twisted his arm when he tried to escape and he told her she was breaking his arm and at Miss Johnson's suggestion, she released him; that after the whipping began he was taken to Miss Johnson's room and saw two straps on the floor; picked up the larger one and threw it aside to prevent its use; that when he got to the principal's room he picked up a baseball bat to protect himself, but did not try to use it; that is when he tried to explain that he had not misbehaved.¹⁸

The court stated that:

We felt that the punishment caused injuries which were due to unusual condition of the skin of the child would not be chargeable against the teacher in the lack of knowledge of it as in *Ely vs. the State of Texas*, but in this case that question is not involved because the child appears to have been a normal child so far as the healthy condition of the skin was concerned.¹⁹

The court found that in this case, there was evidence that the idea of the teacher was not to exercise moderate correction, but the idea was to conquer the child under the circumstances that she was trying to conquer the boy, and not use moderate correction, it was felt that the decision of the trial judge should not be disturbed. The judgment was affirmed.²⁰

¹⁸Ibid., p. 108.

¹⁹Ibid., p. 108.

²⁰Ibid., p. 108.

In this particular case the teacher was found guilty of aggravated assault in the trial, and asked for a rehearing, but was still found guilty as charged.

It was possible to have observed a number of factors which may have influenced the decisions of the courts. First, that the punishment inflicted left bruises on the child. It also seemed that the punishment was out of proportion to the infraction. It was further noted that the instrument used was a strap, and when used extensively could leave severe bruises. It also seemed that the teacher let personal feelings enter in, and the punishment did not seem to be purely for chastising the child.

It seemed reasonable to assume that, when a teacher administers corporal punishment with this attitude, it might reasonably be expected, if they are carried to court, the attitude of the court would be unfavorable.

In still another case where a teacher administered corporal punishment upon a pupil the teacher was brought into court on the charges of assault and battery. In this case, Whitley vs. State, a pupil brought a small bottle of brandy to class. In this case the court took a little different view of the teacher's action in his administering of corporal punishment.

Appellant was a school teacher, and the injured boy was his pupil--17 years of age. He carried a small bottle of branded cherries to the school, and divided it among the pupils, and was punished by the appellant. The boy counted aloud the blows as they

were given, until he had received 63, and then ceased to count, where upon the appellant gave him three more. The appellant stated that he then hit him with his right hand until it was numb, and then changed to his left, and intended to continue the whipping as long as the counting continued, or he was worn out. The boy was much bruised and stiff from the beating.²¹

The court stated that:

As the punishment which a teacher may give a pupil is by statue, required to be moderate, a teacher may be convicted of assault for giving as punishment 66 blows with his hands, though the pupil remained insubordinate until he had received 63 blows.²²

The teacher was convicted of a simple assault and fined in the sum of \$10.00.

While the law did not define any method of controlling refractory pupils, it declared that the punishment inflicted should be moderate. It was considered that the punishment inflicted could not be so regarded, nor could the proposition be maintained that the teacher had the right to whip a pupil until he appeared subdued. In controlling him, he cannot exceed the limit fixed by the statue, which is that the correction must be moderate, and the punishment may not be greatly exceeded by the limit, without subduing the spirit or endurance of the pupil upon whom it was inflicted.²³

²¹Texas Decisions, Southwestern Reporter (St. Paul: Vol. 25-26, March to June, 1894, West Publishing Company, 1894), p. 1072.

²²Ibid., p. 1072.

²³Ibid., p. 1072.

In this case it was felt by the court that the teacher did not use good judgement. It seemed that this teacher abused the right given to teachers to administer moderate punishment. It also appeared that the teacher let his personal feelings enter into the situation while he was administering the punishment. By this factor, and the fact that he used excessive punishment, the court convicted him of simple assault.

Another case where similar action took place was Ely vs. State. The differences between these two cases according to the decisions of the courts was the physical condition of the pupils, and what was found to be the attitude of the defendant while administering the punishment.

This case involved a young lady who had administered corporal punishment to one of her pupils and was brought into court on the charge of assault and battery.

In this case, Ralph, a school boy 13 years of age, violated one of the school rules, and for the purpose of restraining and correcting him in the school during school hours, the teacher whipped him; and that it was necessary to do so at the time.

The whipping was not severe, but due to the pupils physical condition the student became very badly bruised.

The teacher did not know of the pupil's physical condition before the punishment, and this was a very important factor in the courts decision. The punishment was considered to be moderate, but due to the child's physical condition it appeared to be severe.

Another important factor was that upon finding that the appellant was not at the time of the punishment 21 years of age, and by this the state abandoned seeking a conviction for aggravated assault and contended only for a simple assault.

A contest was made in the court to exclude and strike from the record the statement of facts, because it was not filed within the 20 days after adjournment, which was allowed by the court.

Where it reasonably appeared that a statement of facts was filed within the time allowed though the file mark placed thereon made it one day late, the defendant was entitled to the benefit of the doubt, and the statement was considered.

The courts stated that:

There are several complaints in the motion for new trial to the charge of the court and the refusal to give appellant special charges requested; but, as no bill of exceptions was taken and preserved to the charge of the court and none to the special charges requested, we cannot consider those questions.²⁴

The appellant contended that because the information charged that appellant was an adult, and the proof showed that she was not, that the conviction was fatal on account. The Texas statute prescribes that where there was a prosecution for an offense consisting of different degrees the jury may find the defendant not guilty of the higher, but guilty of any degree inferior to that charged in the indictment. She was convicted of a simple assault and battery and fined \$10.00.²⁵

²⁴Texas Decisions, Southwestern Reporter (St. Paul: Vol. 152-153, January to March, 1913, West Publishing Company, 1913), p. 631.

²⁵Ibid., p. 631.

Chapter Summary

It was indicated by the decisions of the courts in the State of Texas that it seemed reasonable to assume that if a teacher administered corporal punishment to a pupil and if the punishment was kept moderate, and without malice and if the teachers were carried to court, the attitude of the court would be favorable.

It was assumed as the result of other decisions of the courts in the State of Texas, that if a teacher administered corporal punishment upon a pupil, and if the punishment was not kept moderate, and without malice and if the teachers were carried to court, the attitude of the court would be unfavorable.

It was indicated further by the decisions of the court of the State of Texas that the right to administer corporal punishment seemed to be granted to the teacher so long as it was kept moderate, and without malice, but seemed to indicate that where a superintendent, acting in the capacity of a teacher, and if the punishment was kept moderate, might administer corporal punishment, and if carried to court that it was reasonable to assume that the attitude of the court would be favorable.

CHAPTER IV

SUMMARY

It has been indicated by Texas laws, and the laws in general that a teacher stands in loco parentis, and has the right to administer corporal punishment, so long as it is kept moderate and without malice.

It was further pointed out that by the act of the parents sending the child to school, the child was placed in the teachers custody, and the teacher was therefore given the right to chastise the child for breaking any reasonable rule of the school.

It seemed to indicate further that the laws were in general agreement, that by the fact that the teachers were in close contact with the child, that they were in a better position to decide when the child needed punishment.

CONCLUSIONS

On the basis of the findings in this study, it seemed reasonable to conclude that:

1. The laws of Texas give the teacher the right to use corporal punishment in the maintenance of order.
2. That where corporal punishment is used by the teacher on the student, the instrument employed should be of a reasonable type.

3. Corporal punishment employed should be in a reasonable amount designed to provide correction, and suited to the general condition of the student involved.
4. Where an instrument is considered improper and the punishment excessive, the teacher may be held both criminally and civilly liable for his actions.
5. Teachers may administer corporal punishment on or off the school grounds, during or after school hours, if a reasonable rule of the school has been broken.
6. A superintendent of schools may have the legal right to administer corporal punishment where he is active as a teacher.

RECOMMENDATIONS

It was also felt that based upon the findings in this study, the following recommendations might be made:

1. That the courts agree that it is legal for a teacher to use corporal punishment in Texas so long as it is kept moderate and without malice.
2. That if it is found to be necessary for a teacher to administer corporal punishment, use a light switch over the back of the legs, or a light ruler on the palm of the hands; do not strike the head, box the ears, or shake the offender.
3. A teacher should always administer corporal punishment, if possible before a witness, such as, another

teacher or principal of the school.

4. A teacher should not administer corporal punishment before other pupils, but should use some private room.
5. The teacher should try every other means before resorting to the use of corporal punishment.

RECOMMENDATIONS FOR FURTHER RESEARCH

On the basis of the findings in this study, the writer wishes to recommend further research in the following areas:

1. A study should be made of recent court cases in order to determine the consistency of the findings in this study.
2. A study should be made where other types of disciplinary measures involving teachers have been carried to court.
3. A study of recourse which the teacher has to provide (liability) insurance against court cases, where matters of misjudgement have been involved.

BIBLIOGRAPHY

Edwards, Newton. The Courts and The Public Schools. Chicago: The University of Chicago Press, 1957.

Funk, Isaac K. and Wagnalls. New Standard Dictionary of The English Language. New York: Funk and Wagnalls Company, 1958.

X Good, Carter V. Dictionary of Education. New York: McGraw-Hill Book Company, Inc., 1945.

X Graham, Leon. Public School Law Bulletin. Austin: Texas Education Agency, Bulletin 587, 1956. 493.

X Hamilton, R. Robert and Mort, Paul R. The Law and Public Education. Chicago: The Foundation Press, Inc., 1941.

X Remmlin, Madaline K. The Law of School Local Public Administration. New York: McGraw-Hill Book Company, Inc., 1953.

Texas Decisions, Southwestern Reporter (St. Paul: Vol. 5, August 8 --December 26, 1887), West Publishing Company, 1887. 122-123.

Texas Decisions, Southwestern Reporter (St. Paul: Vol. 196, July 1917 to January, 1918, West Publishing Company, 1918), 198.

Texas Decisions, Southwestern Reporter (St. Paul: Vol. 294-298, May to July, 1927, West Publishing Company, 1927), 108.

Texas Decisions, Southwestern Reporter (St. Paul: Vol. 25-26, March to May, 1894, West Publishing Company, 1894), 1072.

Texas Decisions, Southwestern Reporter (St. Paul: Vol. 152-153, January to March, 1913, West Publishing Company, 1913), 631.

X Texas, Texas Juris Prudence (Texas: Volume 37B, Article 233), 416-418.

X Texas, Vernon's Penal Code (Texas: Vol. 2, Article 1142), 682.