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Limiting the Use of Corporal Punishment in American Schools: A Call For More Specific Legal Guidelines

CARY W. PURCELL*

Introduction

In each of the United States, children are required by law to attend school until they attain a specified age ranging from fifteen to nineteen.[1] Because of compulsory school attendance laws, children and their parents are forced to endure the sometimes unwanted consequences of the doctrine of *in loco parentis*.[2] This doctrine as defined in *Black's Law Dictionary* means, literally, "in the place of a parent, instead of a parent; discharged factitiously, with a parent's rights, duties, and responsibilities."[3]

As generally applied in the educational context, the doctrine of *in loco parentis* means that, in the classroom, each teacher stands in the place of a student's parents or legal guardian.[4] So that they more efficiently perform their duties and responsibilities, the teachers (and school administrators) are vested with the power to demand and obtain obedience from the students.[5] In most jurisdictions, this right allows teachers to utilize corporal punishment.[6] As social science evidence accumulates that indicates corporal punishment is psychologically and sociologically harmful, the question that concerns many parents opposed to corporal punishment is whether they must accept this involuntary "delegation" of the parental authority which they eschew and, if so, to what extent.

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[1] 24 THE BOOK OF STATES 1982-83 68.

[2] Since children are forced to attend school the student and the parents are therefore forced to accept doctrines espoused by the educational institution.

[3] BLACK'S LAW DICTIONARY 78 (5th ed. 1979).

[4] *See, e.g.*, White v. Richardson, 378 So. 2d 162, 163 (La. 1979); Roy v. Continental Ins. Co., 313 So. 2d 349, 353 (La. Ct. App. 1975).

[5] White v. Richardson, 378 So. 2d at 163.

[6] *Id.*

The doctrine of *in loco parentis* originated in the English common law,[7] which regarded the schoolmaster as standing in the shoes of a parent while the child attended school.[8] As a result, the parent was deemed to have "delegated" part of his or her parental authority to the master.[9] Unless they physically injured or endangered their child, parents had the right to utilize corporal punishment to control his or her behavior;[10] accordingly, the teacher had, by delegation, the same right.[11]

If the doctrine were limited by the "delegation" theory of its common law origin, the modern-day parent would find it relatively easy to restrict the unwanted use of corporal punishment by teachers. First, the parent could argue that, since (unlike nineteenth century England) school attendance is compulsory, there is no voluntary "delegation" of such authority.[12] Second, by specifically prohibiting the teachers from using corporal punishment on his or her child, the parent could theoretically restrict the authority allegedly delegated.[13]

The courts, including the United States Supreme Court, have not, however, limited use of corporal punishment by the logical parameters of the delegation theory.[14] Instead they have emphasized the "state's interest" in sustaining order in our public school system.[15] In *Wisconsin v. Yoder*,[16] the Court stated that "the concept of ordered liberty precludes allowing every person to make his own standard on matters of conduct in which society as a whole has an important interest."[17] Bound by this holding, the Fourth Circuit Court of Appeals later held that the "state's interest" in maintaining order in schools justifies the infliction of corporal punishment, regardless of whether the parents can fairly be said to have "delegated" this power.[18]

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[7] *See, e.g.*, Smith v. The West Virginia State Bd. of Educ., 295 S.E.2d 680, 685 (W. Va. 1982); Roy v. Continental Ins. Co., 313 So. 2d at 353; *See generally* Goldstein, *The Scope and Source of School Board Authority to Regulate Student Conduct and Status: A Non-Constitutional Analysis*, 117 U. PA. L. REV. 373 (1969).

[8] Roy v. Continental Ins. Co., 313 So. 2d at 353.

[9] *Id.*

[10] White v. Richardson, 378 So. 2d at 163.

[11] *Id.*

[12] Note, *The* In Loco Parentis *Status of Illinois Schoolteachers: An Unjustifiably Broad Extention of Immunity*, 10 J. MAR. J. PRAC. & PROC. 599, 625-26 (1977); Note, In Loco Parentis *and Due Process: Should These Doctrines Apply to Corporal Punishment*?, 26 BAYLOR L. REV. 678, 679 (1974).

[13] *Id.*

[14] Wisconsin v. Yoder, 406 U.S. 205 (1972).

[15] *See, e.g.*, Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), *aff'd*, 423 U.S. 907 (1975); Wisconsin v. Yoder, 406 U.S. 205 (1972).

[16] 406 U.S. 205 (1972).

[17] *Id.* at 215-16.

[18] Hall v. Tawney, 621 F.2d 607, 609 (4th Cir. 1980).

Three years after *Yoder*, the Supreme Court summarily affirmed *Baker v. Owen*.[19] In *Baker*, the parents of a student requested that corporal punishment not be used on their child.[20] Despite these instructions, a teacher paddled their child with a drawer divider slightly thicker than a ruler.[21] The district court dismissed the parent's objection by recognizing a "countervailing state interest."[22] It determined that parental approval of corporal punishment is not constitutionally required.[23] The Supreme Court's affirmance, though without full opinion, now makes that treatment of the issue the best authority.[24] Accordingly, the practical questions that parents must face are whether, in spite of the court's decision in *Baker*, the law can evolve in a more enlightened direction and whether its analysis can be meaningfully limited to promote the best interests of school children.

Law libraries are filled with reports of cases evidencing situations in which teachers and school administrators have overstepped their authority.[25] These excesses have often resulted in supposedly unintended, but severe and sometimes permanent, injury to students.[26] Obviously, there is a pressing need to impose specific standards, criteria, and limitations on the application of corporal punishment.[27] This challenge—this need to manage the intricacies of the language of the law so that children can be protected[28]—is the subject of this article.

The structure of our governmental system provides several possible

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[19] 395 F. Supp. 294 (M.D.N.C. 1975), *aff'd*, 423 U.S. 907 (1975). *Baker* was decided by a three-judge district court, the decisions of which are directly appealable to the Supreme Court. 28 U.S.C. § 1253 (1976). Notwithstanding the summary nature of the disposition, the affirmance of the decision (unlike the denial of a writ of certiorari) has precedential effect.

[20] *Id.* at 296.

[21] *Id.* at 303.

[22] *Id.* at 303.

[23] *Id.* at 299.

[24] *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 233 (1972); Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944). Subsequently in Ingraham v. Wright, 430 U.S. 651 (1977), the Court upheld the use of corporal punishment in the absence of antecedent procedural protections.

[25] *See generally* Ingraham v. Wright, 430 U.S. 651 (1977); Schiller v. Strangis, 540 F. Supp. 605 (D. Mass. 1982); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980); Frank v. Orleans Parish School Bd., 195 So. 2d 451 (La. Ct. App. 1967), *writ refused*, 250 La. 635, 197 So. 2d 653 (1976). *See also* J. JACOBS, INDIVIDUAL RIGHTS AND INSTITUTIONAL AUTHORITY: PRISONS, MENTAL HOSPITALS, SCHOOLS AND MILITARY ch. 8 (1979) (discussion of cases involving injury due to the use of corporal punishment and the constitutionality thereof).

[26] *Id.*

[27] Since, through the accepted definition of the *in loco parentis* doctrine teachers are given the authority to use non-parentally approved corporal punishment which may subsequently injure students it provides little protection to the student. Thus, the scope of permitted corporal punishment should be delineated.

[28] Protection from the unjustified but unintentional infliction of physical, psychological and sometimes permanent injury to students.

avenues that could lead to the establishment of specific standards, criteria and limitations on the application of the *in loco parentis* doctrine. Two of these avenues, influencing legislative action by lobbying[29] and providing courts with standards for interpretation,[30] carry with them the highest probability of success.[31] Therefore, the following discussion will explore the use of each of these approaches to limiting the use of corporal punishment.

Legislative Limitations—Prescribing the Permissible

The fact that the Supreme Court has not disapproved of a school district's use of corporal punishment does not immunize it from legislated restraint. As the result of well-organized efforts by public-minded citizens, several large cities that represent the mainstream of social innovation in our nation have severely restricted the application of the *in loco parentis* doctrine. The school districts of Baltimore, New York, Chicago, Boston, Pittsburg, Philadelphia, and San Francisco have expressly prohibited corporal punishment through legislative action.[32] Further, several states have statutorily prohibited the use of corporal punishment in their schools.[33] Other states, unwilling to make this blanket prohibition, have statutorily proscribed the use of corporal punishment by requiring notification,[34] prior parental approval,[35] by expressly limiting the punishment to that which is "reasonable,"[36] or by curtailing its use to that of a last resort measure.[37]

Within these school districts and states, organized leadership has realized that the desired level of control required in a school may be achieved through means less drastic than corporal punishment. Given this realization, they have worked hard to inform their representatives of their convictions and the reasoning behind those convictions. The resulting legislation and ordinances are evidence of the rewards of hard work and determination.

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[29] Lobbying is defined as "[a]ll attempts including personal solicitation to induce legislators to vote in a certain way or to introduce legislation. It includes scrutiny of all pending bills which affect one's interest or the interest of one's client, with a view towards influencing the passage or defeat of such legislation." BLACK'S LAW DICTIONARY 485 (5th ed. 1979).

[30] Well-defined language with specific standards and criteria.

[31] Success measured in the sense of spurring the promulgation of new legislation which will better protect students from unreasonable corporal punishment.

[32] Smith v. West Virginia State Bd. of Educ., 295 S.E.2d 680, 685 n.10 (W. Va. 1982).

[33] *See generally* HAWAII REV. STAT. § 298-16; MASS. GEN. LAWS ANN. ch. 71 § 37G; N.J. STAT. ANN. § 18A:6-1.

[34] CAL. EDUC. CODE §§ 49000-49001.

[35] MONT. REV. CODE ANN. § 75-6109.

[36] N.C. GEN. STAT. § 115-146; OHIO REV. CODE ANN. § 3319.41; VT. STAT. ANN. tit. 16 § 1161; VA. CODE § 22.1-280.

[37] NEV. REV. STAT. § 392.465.

In ascertaining the extent to which the doctrine of *in loco parentis* should apply, legislators should be made aware of the reasonable alternatives to corporal punishment.[38] For example, the utilization of administrative sanctions such as suspensions from school, termination of athletic eligibility, mandatory counseling involving parents, student and counselor and the suspension of other privileges that are valued by students are viable alternatives.[39] These alternatives may be more effective than corporal punishment for several reasons. While functioning as a deterrent, such administrative sanctions can be reversed and used as a reward system for future orderly conduct and improvements which merit recognition.[40] Earning back suspended privileges may give disruptive students the incentive to improve; an incentive which does not accompany corporal punishment.[41] Administrative sanctions can also be reduced or totally withdrawn if such sanctions are later determined to be excessive or the product of a misunderstanding.[42]

Whereas corporal punishment may cause injury, mentally and/or physically, it cannot be reversed and used as a reward system, and cannot be reduced or withdrawn if it is later determined to be excessive or the product of a misunderstanding.[43] Also, by implementing more enlightened hiring policies, school districts should be able to reduce the number of unqualified or underqualified teachers who, by the opinion of some educational professionals, tend to resort to corporal punishment more often than qualified teachers.[44] Concomitantly, legislators must realize that additional funding may be necessary to acquire capable teachers and give them the support of a concerned and able administration. Establishing alternatives to corporal punishment also requires communication and cooperation among teachers, administrators, the P.T.A. and other parental organizations.

Legislators advocating the restriction of the use of corporal punishment are confronted by several obstacles.[45] Although recent amendments to several states' statutes indicate a trend away from the utilization of

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[38] Other alternatives include incentive plans, positive reinforcement, extensive parent-teacher interaction, suspensions, and non-physical punishment.

[39] Interview with Joanne D. Shadel, Teacher, Chicago School District in Chicago, Illinois (June 20, 1983).

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] "Teachers generally agree that underqualified teachers are more inclined to resort to corporal punishment than well qualified teachers when confronted with similar circumstances." *Id.*

[45] Interview with Lawrence E. Pope, Professor of Law, Drake University Law School. B.A., J.D., LL.M. (former House of Representatives Majority Leader, Republican Party, Iowa Legislature (1978-82)).

corporal punishment, the majority has yet to be persuaded.[46] Problems confronting anti-corporal punishment legislation are numerous, but the primary drawback has been social norms which are seeded deep within American culture.[47] Legislators, as representatives of the people, are influenced by the fact that in a majority of jurisdictions a substantial number of constituents condone and advocate the use of corporal punishment, in private as well as public educational institutions.[48] Some school administrators believe many parents advocate or condone corporal punishment because "discipline at school assists parents in raising their children, and in many cases, supplants the parent's inability to raise their children in a disciplined and orderly fashion."[49] Legislators are also influenced by the testimony of psychologists who, as a majority, consistently state that the closer in time that punishment is administered in relation to the punishable offense, the more effective the punishment.[50] Unfortunately, for students, corporal punishment has too often been perceived as the most immediate and impressionable form of punishment available.[51] Many psychologists, however, staunchly believe that institutionalized violence, such as corporal punishment, is counterproductive.[52] Legislators are also concerned about their ability to draft adequate statutory standards delineating meaningful guidelines, narrow enough to protect students from injuries attributable to corporal punishment, and simultaneously, protecting students and teachers from a particular student's violent behavior and facilitating a conducive atmosphere for the orderly administration of the educational process.[53]

When examining the language of state statutes pertaining to corporal punishment, one finds a myriad of adjectives which are intended to define and limit the use of corporal punishment. The most common, and by itself perhaps the most meaningless limitation, is that of "reasonableness."[54] Other state statutes have placed emphasis on limiting corporal punishment to that which is administered in "good faith" or is "reasonably necessary."[55] All such limitations are plagued with ambiguity which

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[46] *See supra* notes 32-37 and accompanying text.

[47] *See supra* note 45.

[48] *Id.*

[49] *See supra* note 39.

[50] *See supra* note 45.

[51] *See supra* note 39.

[52] Resort to violence may beget violence. Some children will react to corporal punishment by becoming even more hostile toward school, teachers and other students. *See* Welsh, *Delinquency, Corporal Punishment, and the Schools*, 24 CRIME & DELINQUENCY 336 (1978).

[53] *See supra* note 45.

[54] *See infra* notes 72-84 and accompanying text.

[55] *See, e.g.*, VA. CODE § 22.1-280; OHIO REV. CODE ANN. § 3319.41.

can only be remedied by more specific language. The Nevada legislature has incorporated such discernable language into their statute pertaining to corporal punishment.[56] In permitting only corporal punishment which is an "appropriate corrective measure," the Nevada statute states that "no corporal punishment may be administered on or about the head or face of any pupil."[57] This language is not definitive, but is representative of the nonspeculative language which is necessary to prevent ambiguity and inconsistent interpretations by the courts.[58]

Some states which have supposedly proscribed the use of corporal punishment have in essence prohibited corporal punishment in name only.[59] In prohibiting the use of physical punishment of any kind upon any pupil, Hawaii's applicable statutes provide for the use of "reasonable force," if "the force used is necessary to further a special purpose, including maintenance of reasonable discipline in a school or class."[60] While in the abstract the difference between physical punishment and use of force to maintain discipline appears clear, there are many situations in which it might be difficult to discern the proper characterization of the force used. The product of such statutory language is the furtherance of ambiguity which frustrates consistent interpretations by the courts.

Other states which have unequivocally proscribed the use of corporal punishment have been more explicit in providing for the use of force for the physical protection of teachers, administrators and other students.[61] The New Jersey statute, which is the most articulate, specifically states that the use of corporal punishment is *not* permitted, but school teachers and administrators may

> [u]se and apply such amounts of force as is reasonable and necessary:
> (1) to quell a disturbance, threatening physical injury to others;
> (2) to obtain possession of weapons or other dangerous objects upon the person or within control of a pupil;
> (3) for the purpose of self-defense; and
> (4) for the protection of persons or property.[62]

These provisions are focused on preventing injurious conduct as opposed to being a form of punishment and, therefore, are agreeably necessary to

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[56] NEV. REV. STAT. § 392.465.

[57] *Id.*

[58] To better protect the best interests of children the statute should have included language prohibiting the use of mechanical devices when administering corporal punishment as well as language restricting the area of contact to the buttocks. *See also* W. VA. CODE 18A-5-1.

[59] *See, e.g.* , HAWAII REV. STAT. §§ 298-16, 703-309 (2).

[60] *Id.*

[61] *See, e.g.*, N.J. STAT. ANN. 18A:6-1; MASS. GEN. LAWS ANN. ch. 71 § 37G.

[62] N.J. STAT. ANN. 18A:6-1 (such acts shall not be construed to constitute corporal punishment within the meaning and intendment of this section).

protect teachers, administrators and other students.[63] Well-defined situations depicting when reasonable and necessary force can be used to prevent injury would facilitate consistent interpretation and application of such statutes.

Realizing that the use of corporal punishment has been long accepted in American culture,[64] the California corporal punishment statute merits attention.[65] Faced with strong lobbying for or against the use of corporal punishment in the school system, the California legislature chose to revive the common law delegation theory of the *in loco parentis* doctrine, and required prior written parental approval as a prerequisite to the utilization of corporal punishment.[67] The California legislature effectively brought the concept of *in loco parentis* and the use of corporal punishment back into the logical parameters of the delegation theory and its common law origin.[68] To be effective such a statute must include well-defined standards and limitations pertaining to those instances where the statutory prerequisites are fulfilled and corporal punishment is to be utilized.

Judicial Applications—Proscribing The Impermissible

In most jurisdictions today, teachers do possess the statutory authority to inflict corporal punishment on their students.[69] Generally, punishment inflicted must be "reasonable," "moderate," and neither "cruel" nor "excessive."[70] These criteria sound good in principle, but, in reality, no precise operational definitions have been established concerning what is meant by "excessive" or "unreasonable" punishment. Each new case that makes it to court is subjected to the uncertainty inherent in varying court interpretations of vague statutory or common law standards.[71] The organized push for an eventual attainment of legislative action

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[63] *See generally* B. Bayhs, SENATE SUBCOMMITTE TO INVESTIGATE JUVENILE DELINQUENCY, COMMITTEE ON THE JUDICIARY, 95TH CONG., 1ST SESS. CHALLENGE FOR THE THIRD CENTURY: EDUCATION IN A SAFE ENVIRONMENT, FINAL REPORT ON THE NATURE AND PREVENTION OF SCHOOL VIOLENCE AND VANDALISM (Comm. Print 1977).

[64] *See supra* notes 46-49 and accompanying text.

[65] CAL. EDUC. CODE § 49000-49001.

[66] *See supra* notes 7-13 and accompanying text.

[67] *See supra* note 65.

[68] *See supra* notes 11-13 and accompanying text.

[69] As it stands today only a few states have prohibited or even limited the use of corporal punishment. *See supra* notes 31-35 and accompanying text.

[70] 68 AM. JUR. 3D *Schools* § 258 (1973).

[71] *See, e.g.*, Tinkham v. Kole, 252 Iowa 1303, 1306, 110 N.W.2d 258, 261 (1961) (no precise rule as to what is excessive or unreasonable punishment as each case depends on own circumstances); Roy v. Continental Ins. Co., 313 So. 2d 349, 353 (La. Ct. App. 1975) (questions of reasonableness or excessiveness determined on case by case basis).

eliminating statutory vagueness would give the courts specific manageable criteria, thus reducing judicial inconsistencies in statutory interpretations.

Many jurisdictions have attempted to define "reasonableness" within the corporal punishment context. For example, the Louisiana Appellate Court, in *Roy v. Continental Insurance Co.*,[72] set forth certain factors to be considered when determining the reasonableness of corporal punishment.[73] Those factors are the age and physical condition of the students, the seriousness of the misconduct eliciting the punishment, the nature and severity of the punishment, the teacher's motivation in the use of discipline, the attitude and past behavior of the student, and the availability of less severe, yet equally effective, means of discipline.[74] Certain of these factors are ambiguous and reasonable parents would differ as to their meaning and application. Such subjective qualifiers as the teacher's motivation, the student's attitude, and the efficacy of less severe means of punishment prevent any hope for consistency in the application of the articulated standards.

The Supreme Court of Iowa in *Tinkham v. Kole*,[75] adopted the general rule that teachers are immune from liability for physical punishment inflicted on their students if it is "reasonable" in degree.[76] In establishing a criteria for reasonableness and attempting to place a clear limitation on the extent of corporal punishment, the court set out the following factors:

> [T]he evidence must show that the punishment administered was reasonable, and such a showing requires consideration of the punishment itself, the nature of the student's misconduct which gave rise to the punishment, the age and physical condition of the student, and the teacher's motive in inflicting the punishment.[77]

The court emphasized that the teacher is liable if any *one* standard is violated. Because it does not refer to the "attitude" of the student,[78] the standard set forth by the *Tinkham* court is perhaps less arbitrary than the standard stated by the *Roy* court.[79] Both standards, however, are plagued by the difficulties of ascertaining when a teacher's "motivation" is unacceptable. One possible guideline on this critical point was artic-

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[72] 313 So. 2d 349, 353 (La. 1975).
[73] *Id.* at 353.
[74] *Id.* at 353, 354.
[75] 252 Iowa 1303, 110 N.W.2d 258 (1961).
[76] *Id.* at 1306, 110 N.W.2d at 261.
[77] *Id.*
[78] *See supra* note 74 and accompanying text.
[79] *See supra* note 77 and accompanying text.

ulated as early as 1853 by the Supreme Court of Indiana. In *Cooper v. McJunkin*,[80] the court held that if the punishment is administered "in anger, or is in any other respect immoderate or improper, the perpetrator may be held liable for assault and battery."[81] "Improper" and "immoderate" are admittedly ambiguous terms, but the emphasis on the passion or anger is well taken. If a teacher has acted out of passion or anger in injuring a student, that teacher should be liable.[82] However, where there is no evidence of passion or anger, logic dictates that courts must visualize a line demarcating where reasonable corporal punishment stops and where assault and battery begins and then determine whether a teacher or administrator has breached such a line. Existing standards, nevertheless, leave courts without an adequate definition of where that line is located.

One of the more enlightened attempts to define "reasonableness" was made by the Supreme Court of West Virginia in *Smith v. The West Virginia State Board of Education*.[83] The court stated that the "doctrine of *in loco parentis* as contained in W. Va. Code, 18A-5-1, in light of the present day standards and legislative enactments concerning child abuse cannot be interpreted as permitting corporal punishment of public school children by means of a paddle, whip, stick, or other mechanical device."[84] The court, however, did not prohibit corporal punishment in the form of spanking by hand, or the "physical seizure and removal of unruly students," nor did it proscribe the "use of physical force to restrain students from fighting or engaging in destructive or illegal acts."[85]

The West Virginia Supreme Court was unique in addressing the due process issue of administering corporal punishment.[86] The court determined that the following minimal due process procedures should be fulfilled before manual corporal punishment can be utilized:

> First, the student should be given an opportunity to explain his version of the disruptive event to allow for the discovery of extenuating circumstances that would prevent a fair mind from using corporal punishment. . . . Second, in the absence of some extraordinary factor, the administration of corporal punishment should be done in the presence of another adult.[87]

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[80] 4 Ind. 290 (1853).

[81] *Id.* at 292.

[82] *See, e.g.*, Doe v. New York City Dep't. of Social Services, 649 F.2d 134 (2nd Cir. 1981); Ingraham v. Wright, 498 F.2d 248 (5th Cir. 1974); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974); Suit v. Glover, 260 Ala. 449, 71 So. 2d 49 (1954); Cooper v. McJunkin, 4 Ind. 290 (1853).

[83] 295 S.E. 2d 680 (W. Va. 1982).

[84] Smith v. West Virginia State Bd. of Educ., 295 S.E.2d at 687.

[85] *Id.*

[86] Courts have usually restricted their decisions to the issue of whether punishment involved was reasonable or excessive in light of circumstances. *See supra* note 7.

[87] Smith v. West Virginia State Bd. of Educ., 295 S.E.2d at 688.

In the West Virginia Supreme Court's attempt to prevent unreasonable corporal punishment by prohibiting the use of mechanical devices and limiting physical punishment to "spanking,"[88] the court failed to give "spanking" a concrete operational definition.[89] *Random House Dictionary's* definition of "spanking,"[90] which could be the basis for a court's definition, leaves room for various interpretations that may not be in the best interest of the students. It is clear, therefore, that the West Virginia Supreme Court could have gone further to protect the students' best interests.[91]

Standards And Guidelines

In formulating realistic standards and criteria to guide legislators and the courts many factors must be considered. Those factors include the best interest of the students, reasonableness, due process, and the states' interest in maintaining order and discipline in our school systems. In an attempt to balance all of these interests and incorporate the progress made in the previously discussed cases, the following standards are recommended for further study:

(1) The doctrine of "*in loco parentis*" shall be defined as meaning that school teachers and administrators stand in the shoes of the student's parent or legal guardian. Consequently parental consent to or permission for the use of corporal punishment shall be required. Nevertheless, teachers and administrators shall have a *limited* power to compel student obedience and order through the use of reasonable non-punitive physical force while the student is attending school. Specific limitations are hereafter delineated.

(2) Corporal punishment shall be defined as meaning only manual corporal punishment, which must be reasonable and moderate and neither cruel nor excessive. Manual corporal punishment shall be strictly construed as spanking with the open hand on a student's buttocks only.

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[88] *Id.*

[89] *Id.* at 687, 688.

[90] "1. moving rapidly and smartly. 2. quick and vigorous./ 1. to strike a person (usually a child) with the open hand, a slipper, etc., especially on the buttocks as in punishment—n. 2. a blow given in a spanking; a smart or resounding slap." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, THE UNABRIDGED EDITION 1363 (1967).

[91] The court's failure to adequately define "spanking" will allow judges in the future to interpret "spanking" as they see fit, which may increase the propensity for victims of unreasonable or excessive corporal punishment to be left without recourse.

Consistent with child abuse laws, there shall be no interpretation permitting corporal punishment of public school students by means of paddle, whip, stick, or other device, instrument, or appliance.

(3) Manual corporal punishment, as defined, shall only be administered after the failure of less drastic alternatives to modify a student's behavior. It shall be administered only by the principal (or by the assistant principal in the principal's absence) and shall be followed by notification to the student's parents or legal guardian.

(4) Students shall be entitled to minimal due process procedures before manual corporal punishment is inflicted.

(a) The student shall be given an opportunity to explain his/her version of the disruptive event, thereby allowing for consideration of factual inconsistencies or extenuating circumstances that could cause a fair minded person to forego the application of corporal punishment.

(b) In the absence of some exigency, the administration of corporal punishment shall be imposed in the presence of another adult.

(c) Under no circumstances shall corporal punishment be imposed in heat of passion or anger. A period of fifteen minutes shall intervene between the decision to apply corporal punishment and its application.

(5) The court shall assess the reasonableness of the application of manual corporal punishment by considering the age and physical condition of the student, the seriousness of the misconduct eliciting the punishment, the nature of the punishment itself, and the availability of a less severe but equally effective means of discipline. Liability may attach if the punishment would be considered unreasonable or excessive under one of these standards.

Conclusion

The United State Supreme Court has made itself clear concerning the facial constitutionality of corporal punishment.[92] However, existing state

[92] *See supra* notes 14-24 and accompanying text.

statutes[93] coupled with the aforementioned suggested standards are convincing evidence that state and local legislatures can manage the intricacies of the language of the law so that children can be protected from ill-defined standards[94] that perpetuate the injurious use of corporal punishment. Moreover, this protection can only be realized by the legislative enactment of specific standards, criteria, and limitations governing the use of corporal punishment that can consistently be interpreted and applied by the courts. Therefore, well-organized efforts of public-minded constituents should be employed to inform and persuade legislators that the *in loco parentis* doctrine, as it pertains to corporal punishment, must be subject to specific statutory limitations. Such specific statutory language will not only guide teachers and school administrators but will also facilitate the judiciary's consistent interpretation and application of the limitations concerning corporal punishment.[95]

[93] *See supra* notes 33-37.

[94] *See supra* notes 70-71 and accompanying text.

[95] In the absence of an unequivocal prohibition of the use of corporal punishment in American schools, the implementation of well-defined and specific standards, criteria, and limitations governing the use of corporal punishment is the only logical alternative which can protect the best interests of school children.