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Don R. Bridinger

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## Discipline by Teachers in Loco Parentis

Don R. Bridinger\*

**T**HIS ARTICLE ATTEMPTS TO SURVEY the legal aspects of one problem of modern American schools—the problem of discipline and control of pupils.

One of the most important functions of the schools is to train boys and girls to appreciate and to practice the American way of life, which stresses friendliness, fair play, teamwork, and ready acceptance of all fellow human beings as equals. We follow this principle: "Train up a child in the way he should go: and when he is old, he will not depart from it."<sup>1</sup>

*Discipline*, as the term is used in teaching, should be interpreted in a broad sense. In the schools its chief importance is its utility as a means of improving a student or a group. In view of this interpretation, what are the functions of discipline? They may be summarized as follows:

1. To create and preserve the conditions essential to the orderly progress of the school. Cooperation on the part of the student, a sense of group responsibility, and an intelligent sympathy on the part of the teachers are essentials. . . .

2. To prepare the student for effective participation in adult life . . . liberties should be granted the students . . . balanced with corresponding responsibilities. . . .

3. Gradually to instill the fundamental lessons of self-discipline . . . by teaching the student the importance of remote over immediate ends. He should be taught the values of persistence and effort.<sup>2</sup>

Acts or attitudes that interfere with the desirable growth of the student in school constitute disciplinary problems. Before attempting to solve a disciplinary problem, whether it be whispering, inactivity, laughing, talking, or open disrespect, the teacher should understand the various causes of disciplinary problems: physiological, personal, social, and schoolroom factors.

1. Physiological factors. From this general source, two principal factors give rise to problems. Health is of great importance to school discipline.

\* B.A., Heidelberg College; Social Studies Teacher at Addison Junior High, Cleveland Public Schools; and a second year student at Cleveland-Marshall Law School.

<sup>1</sup> Proverbs 22:6.

<sup>2</sup> Edmonson, Roemer, and Bacon, *The Administration of the Modern Secondary School*, 221 (1953).

Bad health conditions often lead to irritability, restlessness, and sullen dispositions, with the myriad of bad behavior reactions that may flow from them. Some of these prove very serious indeed. Defective eyes, malnutrition, etc. may lead to apparent stubbornness and sullenness which are really an attempt to cover embarrassment or a baffled mental state that has resulted from a feeling of defeat. Abnormal glandular action may develop a sluggish, phlegmatic, indifferent student; it may also lead to a highly excitable individual—nervous, irritable, and difficult to get along with. A study of five hundred high school problem-cases traced disciplinary difficulties to the malfunctioning of endocrine glands in over 10 per cent of the cases.<sup>3</sup>

Closely akin to health factors are the growth factors peculiar to adolescents. The rapid body growth, accompanied by organic developments, makes junior high and high school youth restless, awkward, self-conscious, and bubbling over with energy and enthusiasm, and produces general emotional instability.<sup>4</sup>

2. Personal factors.<sup>5</sup> Among the chief factors properly classified under this heading are egotism, immaturity of judgment, low mentality, lack of social training, and self-consciousness. Egotism often finds expression in a cocksureness of attitude and in a definite disrespect for authority. From immaturity of judgment there flow all types of behavior problems—some of minor nature, others often vicious—but all resulting from an inability to see the consequences of the act. A person of low mental ability, on the other hand, may not learn quickly by experience. In some situations he is unable to appreciate the implications of his own behavior.

3. Social factors.<sup>6</sup> Among the more important sub-divisions of social factors are the desire for sensationalism, the desire to be identified with the crowd, and resentment of authority. The latter involves varying kinds of temperaments. Even as adults often resist any limitations on their "personal liberties," so does a youth, with a natural impulsiveness, chafe at the restraints placed on him by society. Truancy, open disobedience, or disrespect to the teacher are characteristic of problems associated with student resentment.

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<sup>3</sup> Bossing, *Teaching in Secondary Schools*, 488 f. (1952).

<sup>4</sup> Gates et al., *Educational Psychology*, 58 ff. (1948).

<sup>5</sup> Bossing, *op. cit.*, n. 3.

<sup>6</sup> *Ibid.*, p. 490.

4. Schoolroom factors.<sup>7</sup> Disciplinary problems may also arise from the following: an unattractive room, unhygienic room conditions, uninteresting classroom method, and poor organization of classroom routine.

Having listed various causes of disciplinary problems, what are some of the offenses constituting problems for the teacher?

Some offenses injure the group; others injure only the individual himself. Tardiness ordinarily is the loss of the latecomer, as is unwillingness to work. Other offenses, such as impudence, are direct affronts to the teacher and indirectly undermine the respect and work of the class, in the long run hurting all.<sup>8</sup>

Certain tendencies and activities should always be considered to be serious offenses or behavior problems. This is true of indecency, impudence to teachers and to passers-by, offensive language, marking or injuring property, gambling, rough treatment by bullies, cheating, stealing, and lying.

What measures are effective in dealing with these offenses? A teacher may employ two chief types of measures: preventive,<sup>9</sup> and corrective.<sup>10</sup>

Preventive measures, of course, are the most desirable. One desirable preventive measure is the preparation and interesting presentation of instructional materials. Another is an interesting procedural outline, enthusiastically presented. Still another means of gaining disciplinary control is through adoption and maintenance of high standards of work.

Corrective measures are required when preventive measures either fail or are too late. Among the corrective measures employed by teachers are detentions, personal conferences, restitution, social disapproval, and corporal punishment.

The latter should be used only as a last resort, when other measures have failed to work. Corporal punishment, however, has given rise to numerous lawsuits. For that reason, this article will endeavor to clarify the teacher's legal position when he finally resorts to corporal punishment.

Until the child reaches school age, discipline has been primarily a parental responsibility. If the parents have performed their duties diligently, then the transition to school life

<sup>7</sup> *Ibid.*, p. 492.

<sup>8</sup> Edmonson, *op. cit.*, n. 2, p. 224.

<sup>9</sup> *Ibid.*, p. 227 f.

<sup>10</sup> *Ibid.*, p. 225 f.

can be made with a minimum of difficulty, for at the school level individual desires must give way to rules and regulations designed for the benefit of all. Nevertheless discipline is a continuing problem which requires the attention of both the parents and the teacher.

Recognizing that an undisciplined child will become an undisciplined citizen, in Ohio the "contract of a teacher may . . . be terminated . . . for gross inefficiency . . . or for other good and just cause."<sup>11</sup> In other words, if a teacher fails to maintain order, good government and good discipline in a school, this in itself is sufficient ground for dismissal. Thus, the law ultimately places the responsibility for classroom discipline upon the teacher.

As the teacher's duty is to maintain good order and to require obedience of his pupils, he must necessarily have the power to enforce prompt obedience to his lawful requests and directions. For this reason the teacher may inflict corporal punishment upon pupils who refuse to follow his directions.

From whence does the teacher derive this authority?

Since parents are charged with the duty of bringing their children up in accordance with certain standards, it necessarily follows that they have the right to exercise such control and restraint and to adopt such disciplinary measures as will enable them to discharge the parental duty effectually. A usual and ordinary method of enforcing obedience and good conduct on the part of children is the infliction of corporal punishment, and the law of all countries and in all ages has recognized this as a parental right.<sup>12</sup>

According to the concept *in loco parentis* the teacher stands in the same position to a pupil as do the child's natural parents. The teacher has a corresponding power to use force, provided that "the punishment is moderate and reasonable, and not excessive."<sup>13</sup>

For example, in the case of *Martin v. State* the Ohio Common Pleas Court of Muskingum County held that, before a school teacher can be convicted under the law of Ohio for the improper punishment of a pupil,

the state must show that the punishment administered was immoderate and excessive, and the teacher was actuated by

<sup>11</sup> Ohio Rev. Code, Sec. 3319.16.

<sup>12</sup> 4 Am. Jur. 139, Assault and Battery, Sec. 22; 1 Restatement, Torts, Sec. 147.

<sup>13</sup> *Ibid.*, Sec. 23; and, *State v. Pendergrass*, 19 No. Car. 365, 31 Am. Dec. 416 (1837); and *Prosser, Torts*, 113 (2d ed. 1955).

malice express or implied, and the punishment must have been of such a nature as to produce or threaten to produce lasting or permanent injury. . . .<sup>14</sup>

In the *Martin* case, the pupil was whipped with a stick for the violation of a school rule against snow-balling in the school yard, which violation he readily admitted. The lower court adhered to the rule that punishment should be proportioned to the offense, and held that the teacher is liable civilly and criminally for excessive and immoderate punishment, regardless of his motives and regardless of all questions of malice.

The appellate court, in reversing the lower court's decision, held that

a teacher acts in a quasi judicial capacity and is not liable for an error of judgment in punishment, although the punishment is unnecessarily excessive, and if the punishment is not of such a nature as to cause or threaten lasting injury, and the teacher is not actuated by malice, but acts from good motives, he is not liable either civilly or criminally.<sup>15</sup>

To this latter rule the courts of Ohio have adhered. In order to convict a teacher, the State must show that the punishment was immoderate and excessive, and that malice, either express or implied, was present.

In the more recent case of *State v. Lutz*,<sup>16</sup> the pupil, while on the way to school, had thrown a stone at a little girl, knocking off her glasses. This act might have seriously injured her eyes. The pupil was severely spanked with a paddle, from six to fifteen times, in the presence of his homeroom teacher. As a result his buttocks were a vivid black and blue. The discoloration cleared up in a few days, with some tenderness lasting for a short time longer. As he had been an epileptic since infancy, the court accepted his mother's story that he had had three fits since the paddling. The day after the paddling, the boy's parents took him to the Superintendent of Schools, who saw the bruises and listened to the complaint, but took no action. Next the parents took the boy to his probation officer, who also took no action. They then went to the police court and filed an affidavit charging the principal, and teacher, Mervin R. Lutz, with assault and battery. The defendant school teacher was convicted in the Municipal Court.

<sup>14</sup> *Martin v. State*, 11 Ohio Nisi Prius Rep. 183 (1910).

<sup>15</sup> *Ibid.*, 187.

<sup>16</sup> *State v. Lutz*, 113 N. E. 2d 757 (Ohio, 1953).

In reversing the Municipal Court, the Court of Common Pleas of Stark County enumerated six fundamental propositions of law:

First, the teacher stands in *loco parentis*, and acts in a quasi-judicial capacity and is not liable for an error in judgment in the matter of punishment.

Second, the teacher's responsibility attaches home to home (i.e., while the pupil is on the way to and from school).

Third, there is a presumption of correctness of the teacher's actions.

Fourth, there is a presumption that the teacher acts in good faith.

Fifth, mere excessive or severe punishment on the part of the teacher does not constitute a crime unless it is of such a nature as to produce or threaten lasting or permanent injury, or unless the State has shown that it was administered with either express malice (i.e., spite, hatred, or revenge), or implied malice (i.e., a wrongful act done without just cause or excuse), and beyond a reasonable doubt.

Sixth, the defendant teacher is entitled to all the benefits and safeguards of the well known presumption of innocence.<sup>17</sup>

Perhaps the best expression of the law applicable to the teacher standing *in loco parentis* is to be found in *Holmes v. State*,<sup>18</sup> as stated by the Supreme Court of Alabama:

A teacher or other person standing in *loco parentis*, exercising the parent's delegated authority, may administer reasonable chastisement to a child; and to make it criminal he must not only inflict on the child immoderate chastisement, but he must also do so *malo animo*, or must inflict on him some permanent injury.

The teacher's right to inflict corporal punishment has been made the subject of legislative enactment in a few states. The New York statute, for example, provides that:

To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases. . . .

4. When committed by a parent or the authorized agent of any parent, or by any . . . teacher, in the exercise of a lawful authority to restrain or correct his . . . scholar, and

<sup>17</sup> *Ibid.*, p. 758.

<sup>18</sup> *Holmes v. State*, 39 S. 569 (Ala., 1905).

the force or violence used is reasonable in manner and moderate in degree.<sup>19</sup>

In Pennsylvania the statute reads:

Every teacher in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them.<sup>20</sup>

Several other states have similar statutes.<sup>21</sup>

The Pennsylvania statute endeavors to spell out the common law principle that the teacher's authority attaches to the pupil while he is on his way to and from school, as well as during the time when he is in school.

In *Lander v. Seaver*,<sup>22</sup> an early Vermont case, an eleven year old boy passed the teacher's home an hour and a half after school had closed. In the presence of other pupils, he called the teacher "Old Jack Seaver." The next morning Mr. Seaver whipped the boy with a small rawhide whip. Conceding the teacher's right to punish during school hours, and his control over the pupil from home to school and school to home, the court stated:

When the child has returned home or to his parents control, then parental authority is resumed and the control of the teacher ceases, and then for all ordinary acts of misbehavior the parent alone has the power to punish. . . .

But where the offence has a direct and immediate tendency to injure the school and bring the master's authority into contempt, as in this case, when done in the presence of other scholars and of the master, and with a design to insult him, we think he has the right to punish the scholar for such acts if he comes again to school. . . . But the tendency of the acts so done out of the teacher's supervision for which he may punish, must be direct and immediate in their bearing upon the welfare of the school, or the authority of the master and the respect due him. . . . Hence each case must be determined by its peculiar circumstances. . . .<sup>23</sup>

In the case of *O'Rourke v. Walker*,<sup>24</sup> decided in 1925, the Supreme Court of Errors of Connecticut held that where the rules of the Board of Education authorized corporal punishment,

<sup>19</sup> N. Y. Penal Law, Sec. 246.

<sup>20</sup> Purdon's Pa. Stat. Ann., Tit. 24, Sec. 13-1317.

<sup>21</sup> Minn. Stat. Ann., c. 619.40: Vernon's Tex. Stat., Penal Code, Art. 1142.

<sup>22</sup> *Lander v. Seaver*, 32 Vt. 113, 115, 118, 121, 123 (1859).

<sup>23</sup> *Ibid.*, pp. 118, 121.

<sup>24</sup> *O'Rourke v. Walker*, 128 A. 25 (Conn., 1925).

the teacher had jurisdiction to punish a boy for the offense of abusing small girls who were returning home from school, though the offense was committed after the boy had returned to his home. The court said:

the true test of the teacher's right and jurisdiction to punish for offenses not committed on the school property or going and returning therefrom, but after the return of the pupil to the parental abode, to be not the time or place of the offense, but its effect upon the morale and efficiency of the school. . . .<sup>25</sup>

In *Hutton v. State*,<sup>26</sup> the student violated a rule of the school prohibiting fighting. When it came to the knowledge of the defendant that this pupil and other pupils had been engaged in fighting, he punished all so engaged for the violation of the said rule, by whipping them. The Court of Appeals of Texas held that:

Reasonable chastisement inflicted by a school-teacher upon a pupil for a violation of a rule of the school, even though the violation did not occur at the schoolhouse, nor during school hours, does not, under the laws of this state, constitute an assault.<sup>27</sup>

Notwithstanding the decisions in favor of the teacher's right to inflict corporal punishment,<sup>28</sup> there are those who favor abolition of that right, claiming that:

the practice is primitive, anti-democratic, contrary to modern concepts of human dignity and out of step with the aim and object of punishment—namely adjustment and rehabilitation of the individual. . . . The psychologist warns that maladjustment may result from too severe repressive discipline and that compelling obedience to commands which are not understood or which appear senseless or undesirable to the child constitutes training in incoordination of thought and action. Even mild punishment should be restricted to youngsters who do not resent it, as punishment

<sup>25</sup> *Ibid.*, p. 26; and see, Anno. collection of cases in 41 A. L. R. 1312; Notes, 74 U. Penna. L. R. 99 (1925); 11 Cornell, 266 (1926).

<sup>26</sup> *Hutton v. State*, 5 S. W. 122 (Tex., 1887).

<sup>27</sup> *Ibid.*, and see, 1 Harper & James, Law of Torts, 291 (1956).

<sup>28</sup> "It is a well-established principle of the law of torts that corporal punishment which is reasonable in degree, and which is administered by a teacher to a pupil as a disciplinary measure, is 'privileged' in the sense that the administration of such punishment does not give rise to a cause of action for damages against the teacher." The question of reasonableness is one of fact. States adhering to this general rule: Alabama, Arkansas, Connecticut, Illinois, Indiana, Kentucky, Maine, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Vermont, and Wisconsin. See Anno., 43 A. L. R. 2d 472-473.

may result in a depressed spirit and conviction of inferiority since it emphasizes failure . . . the causes for punishment are increased rather than corrected by the application of force.<sup>29</sup>

Perhaps in Utopia there may be no need for corporal punishment. Any teacher, however, if queried, will quickly dispel any idea that discipline is a minor problem. In an era when the public demands the best possible education for its children, all the teacher's time and energy should not have to be spent on disobedient, noisy, and insubordinate youngsters. Despite the arguments of contrary educational theories, public education is mass education, and overcrowded classrooms leave very little time for individualized handling and instruction.<sup>30</sup>

Training for teaching is compulsory—training for parenthood is not. Until our present high rate of juvenile delinquency abates and parents are either taught or forced to work with the teachers in educating and disciplining their children, the power of the teacher over the pupil should not be weakened or taken away. The more thoroughly the privilege of moderate chastisement is established, the less frequent will be the necessity of resorting to its exercise to enforce discipline.<sup>31</sup>

Many teachers refrain from resorting to corporal punishment when other methods fail, because of the possibility of being prosecuted or sued. To remove this apprehension, more statutes modeled after the Pennsylvania statute should be passed.<sup>32</sup> Thus, supported by statutory law, teachers will be better able to cope with problems arising in the classroom whenever the situation suggests the need for corporal punishment.

As for the rules and regulations of the school, the violation of which may call for corporal punishment,

teachers . . . in loco parentis to their pupils are better qualified to judge the wisdom of . . . rules and regulations

<sup>29</sup> Miller, *Resort to Corporal Punishment in Enforcing School Discipline*, 1 Syracuse L. R. 264 (1949).

<sup>30</sup> "It is impossible . . . for a teacher to have five classes daily with thirty-five to forty students in each class and still accomplish all he is expected to do these days. Such a teacher cannot diagnose the causes of every student's difficulty and then plan appropriate individual remedial programs. He does not have the time . . . teaching keeps the teacher on the go from one end of the period to the other . . . meeting parents, preparing for class, correcting students' work, and constructing . . . carefully planned tests . . ." Rivlin, *Teaching Adolescents in Secondary Schools*, 490 (1948).

<sup>31</sup> Miller, *op. cit.*, n. 29, p. 265.

<sup>32</sup> *Supra*, n. 20.

than are the courts. The only concern of the courts is to determine whether the school rules and regulations are reasonable or they are arbitrary.<sup>33</sup>

To one who has had actual experience with the problem, it seems that the ancient Biblical writer showed profound insight into an old problem when he wrote:

Withhold not correction from the child: for if thou beatest him with the rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell.<sup>34</sup>

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<sup>33</sup> *Casey Co. Board of Education v. Luster*, 282 S. W. 2d 333 (Ky., 1955).

<sup>34</sup> Proverbs 23: 13-14.