SOME LEGAL CONSIDERATIONS IN UPDATING DISCIPLINE*

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I am flattered and honored to be chosen to give some remarks on the legal considerations in updating discipline. I am very happy to do this. It suggests that students are still being disciplined. Sometimes it appears that children and students control parents and teachers rather than the other way around. Progressive education and modern psychology have practically displaced the parent and teacher as a significant authority figure in a child's or student's life. If an old-fashioned parent saw handwriting or blotches on the wall, he would punish or chastise the child responsible. Today we have the handwriting analysed or the blotches psychologically evaluated. I am a great believer in allowing students a maximum of freedom and individual autonomy. However, freedom implies responsibility, responsibility for the consequences of exercising freedom.

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Now I did not come here to talk about the psychology of freedom or the responsibility of students as such, although necessarily certain legal questions arise in this regard which will be touched upon. I will try, in as simple language as is possible for a lawyer, to discuss the power and rights of teachers to discipline students. It is not a simple matter for a lawyer to talk simply.

> (A lawyer who was trying a case asked the witness, 'Now, Mr. Gibbons, did you or did you not, on the date in question or at any other time previously or subsequently, say or even intimate to the defendant or anyone else, whether friend or acquaintance or in fact a stranger, that the statement imputed to you, whether just or unjust and denied by the plaintiff was a matter of no moment or otherwise? Answer -- did you or did you not?".... The witness pondered for a while and then said, "Did I or did I not what?")

What little advice I might give, you can do with it what most people should do with officious advisers: pass it on to somebody else. Yet I must beg your indulgence for the way I am going to talk. Sometimes we find it necessary to sacrifice lucidity for accuracy. For instance, in these days of professional education, the matter of punctuation is important; in law, it can be vital. We might make a statement, "Woman is pretty, generally speaking." Now take away the comma and you have, "Woman is pretty generally speaking." (By the way, I said once to my secretary, "I hope you understand the importance of punctuation." She assured me, "Oh, my, yes, I always get to work on time.")

Corporal Chastisement

I do not know whether it is still believed that if you spare the rod you spoil the child. I do think if you spare the rod or abidicate authority, the child will run over you. It is a well-established rule of the law of torts that a teacher is immune from liability for physical punishment, reasonable in degree, administered to a pupil. The teacher is held (and in some jurisdictions is stated by statute) to stand in loco parentis, and to share the parent's right to obtain obedience to reasonable commands by force. In the Texas Penal Code Art. 1142 we have a provision dealing with lawful violence which says, "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 parent over the child, the guardian over the ward, the master over the apprentice, the teacher over the scholar.

2. To preserve order in a meeting for religious, political or other lawful purposes . . . ."

But a teacher's right to use physical punishment is a limited one. His immunity from liability in damages requires that the conduct evidenced show that the punishment administered was reasonable, and such a showing requires consideration of the nature of the punishment itself, the nature of the pupil's misconduct which gave rise to the punishment, the age and physical condition of the pupil, and the teacher's motive in inflicting the punishment. If consideration of

all of these factors indicates that the teacher violated none of the standards implicit in each of them, then he will be held free of liability; but it seems liability will result from proof that the teacher, in administering the punishment, violated any one of such standards.

Of course, whatever punishment is administered must not be inspired by hate, vindictiveness, or malice.

Of course, also every school authority is not entitled to the privilege of chastisement. For example, there is a Texas case which holds that a superintendent of schools does not have this privilege or right--whether it was a custom or not. Prendergast v. Masterson, 196 S. W. 246, (1917). The right has to be more or less conferred by law. Generally, it is necessary that the person administering the punishment be responsible for maintaining order and discipline.

I do not know how much I should dwell on this. I assume there are some high school teachers and personnel workers present. I suppose this area of the law is not important any more since corporal punishment is considered passe.

If there are no questions on this, I will pass on to the next subject. If you wish, you may ask me questions later on.

Suspension and other Disciplining

Art. 2904 of the Texas Civil Code provides that trustees of schools may suspend from the privileges of schools any pupils found guilty of incorrigible conduct,

but such suspension shall not extend beyond the current term of the school. You would have to consult statutes in your various jurisdictions to determine whether such a provision there obtains. Generally such a power is granted every where. Since there is a compulsory school attendance law (Texas Art. 2898) in all jurisdictions it might be wondered whether anyone less than a school board could suspend or provide for suspension. This very question was raised in a case (Bishop v. Houston Independent School Dist. et al. 35 S. W. 2d 465 (1929)) involving the Houston Independent School Dist. It was there held that Art. 2904 does not deprive local school authorities of the general power to suspend pupils for persistent violation of school rules.

Courts generally will not interfere with suspension or disciplining of students unless it is arbitrary, wanton, or groundless. Considerable leeway is granted school authorities in their disciplining and rule making if they act in good faith and there is some rational basis or ground for their actions or rules. For example, Revolution of school district providing that married students or previously married students should be restricted wholly to classroom work and barring them from participating in athletics or other exhibitions and prohibiting them from holding class offices or other positions of honor other than academic honors such as valedictorian and salutatorian

was not violative of public policy on ground that it penalized persons because of marriage. Courts will not interfere with the exercise of authority by school trustees unless a clear abuse of power an discretion is made to appear. Kissick v. Garland Independent School Dist. 330 S. W. 2d 708 (1959).

Courts have upheld school rules that required pupils to do sweeping and other chores around classroom as part of duties incident on attendance in school, Wilson v. Pierce, et al., 123 S. W. 2d 695, (1938) that prohibited the wearing of transparent hosiery, lownecked dresses, or any style of clothing tending toward immodesty in dress, or the use of face powder or cosmetics, Pugsley v. Sellmeyer, et al. Ark, 250 S. W. 538, (1923) or any other rules necessary for the welfare of the school and the interests of the other children, in the absence of any law prohibiting same. There are certain restrictions as far as high schools are concerned in Texas in connection with sororities, fraternities, et cetera.

I hardly have said anything specific about college discipline. Dr. Jones told me I was not to talk over 20 minutes. Like most recipients of advise I am going to pass this 20 minutes limitation on to the speakers that follow me. The first thing here to note is that most college students have choronologically reached an age of responsibility as far as the criminal law is concerned. Any male over 16 or female over 17 can be prosecuted in

the regular criminal courts in Texas and will not be judged as a juvenile delinquent for his misconduct. This means students for all practical purposes are adults and their conduct must, to a large measure, conform to standards set for grown-ups. Thus, by the same reasoning their conduct in college, perhaps, can reasonably be more restricted or regulated than when they were in grade or high school.

Here another distinction should be noted. The powers of school authorities in private and state schools are different. For instance, with some exceptions that I do not have the time to enumerate, private school can dismiss a student, in theory, without due process of law. The bulletin and contract of enrollment would govern here. However, when a state school acts, in instances, we have state action which is governed by the Fourteenth Amendment. By the way the fact that you have state action may absolve an institution from liability, say, for injuries students may suffer in a school bus accident. Thus, the question may arise whether a student may be dismissed without a hearing, whether if a hearing is granted what safeguards are provided in the hearing, such as right to counsel, and whether the rules are so arbitrary that even if an other wise fair hearing is given, has a student been denied due process by applying such rules.

The law is very unsettled in this area. The protective attitude of governmental authority is expanding. Generally it might be said that, although the most far reaching substantive power is recognized in all branches of the government,

local, state, and national, there is a tendency on the part of the Supreme Court of the United States to insist upon procedural safeguards. Ordinarily, a student suspended or dismissed for cheating on an examination or violating some other rules of a university is not entitled to a judicial-like hearing. A judicial-like hearing requires notice, confrontation of witnesses, right to introduce witnesses on the accused behalf, right of counsel, and the like. Nevertheless, where practical or necessary for fairness, as many of these safeguards as possible should be afforded a student. Regardless of legal effect or sanction, highhanded and arbitrary procedures should not be followed in disciplining students.

Before I finish a few words should be said about the sit-ins. This is a problem of infinite complexity and embarrassment for a personnel administrator or adviser in a Negro school. Any school worthy of the name, university or college, should inspire in its student body a sense of dignity and dedication to the ideals of the Constitution such that the students by their internal convictions are compelled to participate in these demonstrations of self-respect. Yet it cannot be denied that these demonstrations are replete with awful consequences. Certainly, it would be ill-advised for a teacher or administrator to urge such conduct. By the way, the law generally provides that where a person in a position of trust or responsibility to youths, which we certainly are, urges or aids in the commission of

a misdemeanor, the former is usually doubly punished for the offense committed. So what do you do?

This problem is even more delicate for a person in my position; for a law-student probably will not be admitted to any bar if he is convicted of any offense, except a traffice violation or the like. What is the use of training a person to become a lawyer and then condone or urge conduct which will probably prevent him from becoming one? We certainly must apprise students of the possible consequences of their conduct. We have here, what is called in law, a problem of balancing the interests. Do the advantages to be gained from these sit-ins outweigh the possible ill-effects that will probably result--such as a criminal record, time from school work, and incaceration. I must say that legal or even institutional advice necessarily will be more conservative in this area than political- or social-action advice. As far as possible I think a hands off approach should be made to these demonstrations. They need not be encouraged or discouraged. It should be made clear to the students that the rules of the school wil generally be maintained, e.g., cut regulations and assignments will not be suspended for their benefit. If students must engage in this kind of conduct they must be willing to suffer the consequences. However, nothing can be more dastardly, vile, disgusting, and reprehensible than for a college administrator to go out of his way to gratuitously penalized a student for engaging in such activity. The word that comes

to mind to describe such an execrable poltroon is the inevitable "tom" or "handkerchief-head." Of course, such labels do not dispose of the difficult problem of making a decision in a concrete situation.