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Review

Limits of corporal punishment in public schools

Ingraham v. Wright:
The Limits of Corporal Punishment in Public Schools

In April the U. S. Supreme Court handed down its corporal punishment decision which, by a narrow 5-4 majority vote, denied application of either Eighth or Fourteenth Amendment protection to public school discipline cases. Before considering its implications for public school administators, it is instructive to review the **Ingraham v. Wright** decision (45 **Law Week** 4364).

Plaintiffs Ingraham and Andrews were junior high students in one Dade County school that had a record of applying exceptionally harsh discipline. Ingraham, for example, testified he was out of school for 11 days while suffering from a painful hematoma from a paddling in the principal's office where two assistant principals pinned him face down across a table while the principal administered at least 20 licks. Andrews testified to being paddled several times with painful, non-permanent injuries resulting. On at least two occasions punishment was meted out in spite of Andrew's denial of alleged wrongdoing. A three-judge panel of the Fifth Circuit Court of Appeals decided in favor of the students (498 F. 2d 248 (1974)], but was overturned when the case was reheard by the whole Fifth Circuit which concluded that the students had no Eight or Fourteenth Amendment grounds for recovery [525 F. 2d 909 (1976)]. The Supreme Court granted *certiorari* and focused on two issues:

1) Does the Eighth Amendment's prohibition against "cruel and unusual punishment" reach an extremely harsh case of corporal punishment in a public school? Justice Powell, writing for the majority, asserted that the "cruel and unusual punishment" prohibition of the Eighth Amendment had been applied only to criminal punishment and was therefore inapplicable to sanctions applied in schools. In response to the rather anomalous situation this conclusion creates—where school children could be beaten unmercifully without constitutional redress while the Eighth Amendment would protect convicted criminals from a similar punishment—[Jackson v. Bishop, 404 F. 2d 571 (CA8, 1968) and Estele v. Gamble, 97 S. Ct. 285 (1976) apply the Eighth Amendment to appropriate treatment of convicted criminals]—Justice Powell emphasizes the existing family and community support system for the child as well as the openness of the public school to distinguish the student from the incarcerated criminal. Abuses of corporal punishment in the school are to be managed through civil and criminal liability, not a constitutional standard.
2) Does the Fourteenth Amendment require minimal procedural safeguards to accompany the punishment?
Although the majority opinion finds that corporal punishment amounts to a deprivation of liberty, Justice Powell believes that existing criminal and civil liability provides sufficient safeguards to protect the student. Departure from these traditional safeguards and requirement of advance procedural safeguards would add to the cost of disciplining students with no apparent benefit.

The *Ingraham* decision is more important for schools and school districts because of what it omits rather than what it states. First, the decision focused exclusively on constitutional issues. Although the Eighth and Fourteenth Amendments were held inapplicable to public school corporal punishment, the status quo is maintained. State laws and school board policies can still be framed which will limit or prohibit corporal punishment.

Second, the Court did not address the questions of apporpriateness of corporal punishment in public schools. This is an educational debate which will need to be raised at state or local policy-making levels, in which administrators will continue to have a central role.

Third, if schools decide to employ corporal punishment in their discipline schemes, they have a range of options regarding procedural safeguards to accompany it. For reasons of educational soundness as well as insurance against criminal or civil liability, districts may require that certain precautionary procedures accompany corporal punishment. Contrary to Justice Powell's majority decision, I believe the cost of providing such procedures is minimal, with the benefits far outweighing the costs. This is particularly true if the administrator believes in the procedures.

In a larger historical sense the *Ingraham* decision may mark the end of the judicial activist period of the Supreme Court which saw the Court willing to become involved in a number of public school affairs as a matter of constitutional law. Although a eulogy for the Supreme Court's activist period (1969 *Tinker*—1977 *Ingraham*) is premature, it is safe to say that the *Ingraham* decision provides a broad discretionary authority to public schools in the area of corporal punishment. Let us hope that the wisdom and judgment of the educational administrators are sufficiently sound that the corporal punishment policies will be developed according to criteria of educational quality and not by simple adherence to constitutional minima.

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