

**UNITED STATES OF AMERICA**

**BRIEFING FOR THE HUMAN RIGHTS COUNCIL  
UNIVERSAL PERIODIC REVIEW 9<sup>th</sup> Session, 2010-04-19**

**From: EPOCH-USA**

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EPOCH-USA seeks to end physical punishment of children through education and legal reform. EPOCH-USA urges the Human Rights Council Review to highlight the importance of ending physical punishment of children in all nations in order to protect the physical integrity of children and affirm their rights to be respected and free from physical harm.

Children in the United States lack legal protection from physical harm. The outcomes are devastating to children. Research shows that physical punishment puts children at risk for physical injury and even death as well as negative outcomes including increased mental health problems. (1)

In homes: In all states, parents are legally permitted to use physical punishment on children. According to the U.S. Department of Human Services, 79,866 children were confirmed as physically abused in 2007. (2) Studies show that 20-50 incidents of physical abuse go unreported for each confirmed case. (3)

In schools: According to the U.S. Department of Education Office of Civil Rights, 223,190 school children were subjected to corporal punishment in the 2006-2007 school year. Many children require medical treatment for injuries. Thirty states have banned corporal punishment in schools.

In alternative care settings such as child care, foster care and institutions for children: A majority of states prohibit corporal punishment.

Since 1998, EPOCH-USA has provided small grants to more than 600 non-profit organizations, schools and churches to teach effects of physical punishment and alternatives to parents and caretakers. More than 10,000 parents have participated in these informational programs. (4)

As a result of the lack of legal protection of schoolchildren, EPOCH USA had combined forces with other children's rights groups to persuade schools to abandon corporal punishment at the school district level. These efforts have resulted in some success over the past several years, but twenty states still allow school paddling. Congress is considering a bill now that would deny all federal funding to schools that paddle children. Carolyn McCarthy (D-NY) is expected to introduce a proposed bill in the next several weeks.

Included in this comment, is a brief article on the state of the law on school corporal punishment written by Professor Deana Pollard-Sacks, a law professor and EPOCH-USA Advisory Board member.

**In Summary:** Children in the United States lack legal protection from physical punishment. We urge the Review to call attention to the need to end physical punishment of children in all settings in all countries.

1. **Center for Effective Discipline**, *Report on Physical Punishment in the United States: What Research Tells Us About Its Effects on Children*, 2008.

<http://www.phoenixchildrens.com/about/community-outreach-education/effective-discipline.html>

2. **Center for Effective Discipline**, Physical Abuse Cases by State

<http://www.stophitting.com/index.php?page=statelegislation>

3. **PEDIATRICS**, Vol. 115 No. 3 March 2005, pp. e331-e337 (doi:10.1542/peds.2004-1033)

4. EPOCH-USA, SpankOut Day USA

<http://www.stophitting.com/index.php?page=spankout>

## **School Paddling: The State of American Law**

**Professor Deana Pollard-Sacks – Texas Southern University & EPOCH USA**

Prior to 1977, federal courts reviewed constitutional challenges to school paddling under a general substantive due process analysis for *legislative* deprivations of liberty. That is, the courts asked whether school paddling was sufficiently efficacious to meet the state's educational purpose to pass constitutional scrutiny, since paddling implicates a student's liberty interest in bodily integrity. In cases prior to 1977, the federal courts were influenced substantially by the historical use of corporal punishment in schools and the fact that it was accepted in the vast majority of states – only two states had outlawed school paddling by 1977. In addition, the expert testimony at that time was mixed. Today, thirty states have banned school paddling, and expert testimony is considerably one-sided in opposing school paddling due to its inefficacy, danger to children, and often counter-productive effects. If a means-to-ends analysis were employed today as it was prior to 1977, school paddling would likely be deemed an unconstitutional liberty violation because the state would be unable to show sufficient and credible justification for its use.

However, in 1977, the Supreme Court decided *Ingraham v. Wright*, which changed the constitutional analysis. In *Ingraham v. Wright*, the Court granted certiorari on the issues of cruel and unusual punishment under the Eighth Amendment and procedural due process under the Fourteenth Amendment relative to severe beatings perpetrated against boys in a public high school in Florida. The Court found that the Eighth Amendment does not apply outside of the criminal punishment context, and therefore does not apply to public schoolchildren. The Court decided that no procedural due process was due to a student prior to the execution of school corporal punishment. This left students with complaints regarding school paddling with only a substantive due process claim and state tort and criminal remedies.

Although the Supreme Court did not consider the substantive due process issue in *Ingraham v. Wright*, the opinion contained some language that influenced lower courts to adopt an *executive* deprivation of liberty analysis, which is a much more difficult form of unconstitutional government action to establish. That is, most courts post-*Ingraham* have

decided that in order for a student to establish a liberty violation arising from school paddling, he must show that the paddling was so brutal and inhumane that it “shocks the conscience” of the court and/or was executed with “malice or sadism,” as opposed to considering the efficacy of the practice as a whole relative to the state’s educational goal.<sup>1</sup> The federal courts’ opinions reveal confusion regarding the different constitutional tests for legislative and executive deprivations of liberty, and no court has meaningfully addressed the propriety of school paddling under the legislative means-to-ends analysis. The Supreme Court has repeatedly rejected petitions for certiorari on the issue of substantive due process, most recently in 2008.

It is very difficult to establish a constitutional violation today based on the lower courts’ use of the executive deprivation analytical model. Moreover, state laws offer immunities for school employees relative to both tort and criminal sanctions. Therefore, tort and criminal law offer little protection for schoolchildren who are paddled, even when they are paddled severely with lasting injury.

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<sup>1</sup> For a complete analysis of all of the federal cases both pre- and post-*Ingraham v. Wright*, please see Deana Pollard Sacks, *State Actors Beating Children: A Call For Judicial Relief*, 42 U.C. DAV. L. REV. 1165-1229 (2009).