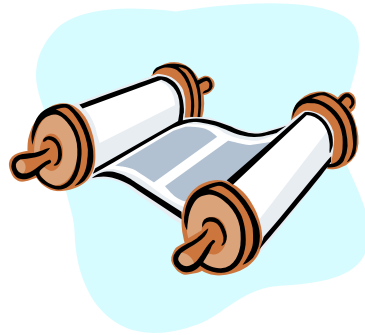


# SIXTH ANNUAL

## MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT

### CONSTITUTION DAY TEACHING MODULE



### The Eighth Amendment and Corporal Punishment in Public Schools

September 17, 2010

Produced by the **Marshall-Brennan Constitutional Literacy Project** at American University Washington College of Law. Substantial contributors to this unit include Heidi Sahmel, Caleb Medearis, and Maryam Ahranjani.

# The Eighth Amendment and Corporal Punishment in Public Schools

## Description:

This unit can be taught during the week of Constitution Day or afterwards, either as a supplement to the “Constitution Day 2010- The Eighth Amendment: Cruel and Unusual Punishment and Graham v. Florida” lesson plan or on its own. It is recommended, though, that students are familiar with the information provided in the Background Information and Modern Application – “Evolving Standards of Decency” sections of the Graham v. Florida teaching module prior to learning about corporal punishment.

As with the Graham v. Florida teaching module, the goal of this lesson plan is to commemorate this important day in our Nation’s history by teaching 9<sup>th</sup>-12<sup>th</sup> grade students about the significance of the Constitution as a living document that confers rights upon them as young people.

## Objectives:

- 1) To learn about the Eighth Amendment in greater depth, focusing on the issue of corporal punishment in schools. Corporal punishment provides a unique opportunity for students to think about how the Eighth Amendment affects them personally.
- 2) To learn about the Supreme Court case Ingraham v. Wright, in which the Court held that the Eighth Amendment only protects criminals and applies strictly to governmental action, as opposed to public school discipline of students.

Length of Lesson: 1-2 class periods

Day One: Review material covered in the Background Discussion, Amendment Overview, and Modern Application – “Evolving Standards of Decency” of the Graham v. Florida lesson. Review vocabulary list. Read Ingraham v. Wright case and complete accompanying worksheet.

Day Two: Review Ingraham v. Wright worksheet, address “The Aftermath of Ingraham v. Wright,” complete “Corporal Punishment in Your School” exercise, and discuss Corporal Punishment Statistics.

Supplies Needed: This packet and the Graham v. Florida packet.

## **Corporal Punishment: The Eighth Amendment in the School Setting**

While the Eighth Amendment is usually thought of in the jail or prison context, there are other places where the government may impose punishment on the citizenry. In the following case, students who were paddled on the buttocks multiple times by their teachers asserted that they had been subjected to cruel and unusual punishment at school in violation of the Eighth Amendment. Nevertheless, the Supreme Court disagreed. The Court found that the Eighth Amendment's ban on cruel and unusual punishment, while applying to other situations outside of the jailhouse, simply does not apply to the application of corporal punishments in the schoolhouse. This is because the Eighth Amendment only applies to government action, not the action of private actors such as teachers.

### **Ingraham v. Wright (text from *We the Students* pgs. 169-175)**

Supreme Court of the United States

Argued November 2-3, 1976

Decided April 19, 1977

Justice POWELL delivered the opinion of the Court.

This case presents [a question] concerning the use of corporal punishment in public schools: ... whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment....

... In the 1970-1971 school year, many of the 237 schools in Dade County used corporal punishment as a means of maintaining discipline pursuant to Florida legislation and a local School Board regulation. The statute then in effect authorized limited corporal punishment ... proscribing [only] punishment which was "degrading or unduly severe" or which was inflicted without prior consultation with the principal or the teacher in charge of the school. The regulation contained explicit directions and limitations. The authorized punishment consisted of paddling the recalcitrant student on the buttocks with a flat wooden paddle measuring less than two feet long, three to four inches wide, and about one-half inch thick. The normal punishment was limited to one to five "licks" or blows with the paddle and resulted in no apparent physical injury to the student. School authorities viewed corporal punishment as a less drastic means of discipline than suspension or expulsion. Contrary to the procedural requirements of the statute and regulation, teachers often paddled students on their own authority without first consulting the principal.

... The evidence, consisting mainly of the testimony of 16 students, suggests that the regime at Drew [High School] was exceptionally harsh. The

testimony of Ingraham and Andrews, in support of their individual claims for damages, is illustrative. Because he was slow to respond to his teacher's instructions, Ingraham was subjected to more than 20 licks with a paddle while being held over a table in the principal's office. The paddling was so severe that he suffered a hematoma requiring medical attention and keeping him out of school for several days. Andrews was paddled several times for minor infractions. On two occasions he was struck on his arms, once depriving him of the full use of his arm for a week....

## II

... We ... begin by examining the way in which our traditions and our laws have responded to the use of corporal punishment in public schools.

The use of corporal punishment in this country as a means of disciplining school children dates back to the colonial period.... Despite the general abandonment of corporal punishment as a means of punishing criminal offenders, the practice continues to play a role in the public education of school children in most parts of the country....

At common law a single principle has governed the use of corporal punishment since before the American Revolution: Teachers may impose reasonable but not excessive force to discipline a child.... The basic doctrine has not changed. The prevalent rule in this country today privileges such force as a teacher or administrator "reasonably believes to be necessary for [the child's] proper control, training, or education." To the extent that the force is excessive or unreasonable, the educator in virtually all States is subject to possible civil and criminal liability.

... All of the circumstances are to be taken into account in determining whether the punishment is reasonable in a particular case. Among the most important considerations are the seriousness of the offense, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of the child, and the availability of less severe but equally effective means of discipline.

Of the 23 States that have addressed the problem through legislation, 21 have authorized the moderate use of corporal punishment in public schools.... Only two States, Massachusetts and New Jersey, have prohibited all corporal punishment in their public schools....

Against this background of historical and contemporary approval of reasonable corporal punishment, we turn to the constitutional questions before us.

## III

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." An

examination of the history of the Amendment and the decisions of this Court construing the proscription against cruel and usual punishment confirms that it was designed to protect those convicted of crimes. We adhere to this longstanding limitation and hold that the Eighth Amendment does not apply to the paddling of children as a means of maintaining discipline in public schools....

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Petitioners... urge nonetheless that the prohibition should be extended to band the paddling of schoolchildren. Observing that the Framers of the Eighth Amendment could not have envisioned our present system of public and compulsory education, with its opportunities for noncriminal punishments, petitioners contend that extension of the prohibition against cruel punishments is necessary lest we afford greater protection to criminals than to schoolchildren. It would be anomalous, they say, if schoolchildren could be beaten without constitutional redress, while hardened criminals suffering the same beatings at the hands of their jailers might have a valid claim under the Eighth Amendment. Whatever force this logic may have in other settings, we find it an inadequate basis for wrenching the Eighth Amendment from its historical context and extending it to traditional disciplinary practices in the public schools.

The prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration. The prisoner's conviction entitled the State to classify him as a "criminal," and his incarceration deprives him of the freedom "to be with family and friends and to form the other enduring attachments of normal life." Prison brutality is "part of the total punishment to which the individual is being subjected for his crime and, as such, is a proper subject for Eighth Amendment scrutiny." Even so, the protection afforded by the Eighth Amendment is limited. After incarceration, only the "unnecessary and wanton infliction of pain," constitutes cruel and unusual punishment forbidden by the Eighth Amendment.

The schoolchild has little need for protection of the Eighth Amendment. Though attendance may not always be voluntary, the public school remains an open institution. Except perhaps when very young, the child is not physically restrained from leaving school during school hours; and at the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest and instances of mistreatment.

The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner. In virtually every community where corporal punishment is permitted in the schools, these safeguards are reinforced by the legal constraints of the common law. Public school teachers and administrators

are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability....

We conclude that when public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable...

Affirmed.

### Dissenting Voices

Justice White dissented forcefully and was joined by Justices Marshall, Brennan, and Stevens. He rejected the Court's conclusion that corporal punishment in public schools, no matter how severe, could never qualify as "cruel and unusual punishment" within the meaning of the Eighth Amendment. He wondered why certain punishments, such as beatings in the face, "are so barbaric and inhumane" that they could never lawfully be imposed on prisoners but could now theoretically be imposed on students without violating the Eighth Amendment.

Justice White argued that if a punishment (such as tar and feathering) violates the cruel and unusual punishment clause for prisoners, then also it "may not be imposed on persons for less culpable acts, such as breaches of school discipline." He wrote:

[I]f it is constitutionally impermissible to cut off someone's ear for the commission of murder, it must be unconstitutional to cut off a child's ear for being late to class. Although there were no ears cut off in this case, the record reveals beatings so severe that if they were inflicted on a hardened criminal for the commission of a serious crime, they might not pass constitutional muster.

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## Exercise – Ingraham v. Wright Worksheet

1. What is the issue in this case?

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2. The majority says that the common law view of corporal punishment is that “[t]eachers may impose reasonable but not excessive force to discipline a child.” The opinion also states that today, reasonable force is determined by what the teacher or administrator “reasonably believes to be necessary for [the child’s] proper control, training, or education.” Do you think that teachers and administrators should be given so much discretion?

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3. The Court held that the Eighth Amendment does not apply to discipline in public schools, and therefore corporal punishment is not cruel and unusual. Why does the Court decide that the Eighth Amendment only applies to individuals convicted of crimes?

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4. The petitioners argued that by limiting the Eighth Amendment to only criminal charges, the Court was giving more rights to inmates than students. Do you agree? In regards to this argument, what rule did Justice White propose in his dissent?

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## Exercise – Ingraham v. Wright Worksheet KEY

What is the issue in this case?

- The issue in this case is whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment

The majority opinion says that the common law view of corporal punishment is that “[t]eachers may impose reasonable but not excessive force to discipline a child.” The opinion also states that today, reasonable force is determined by what the teacher or administrator “reasonably believes to be necessary for [the child’s] proper control, training, or education.” Do you think that teachers and administrators should be given so much discretion in deciding what is appropriate?

- Although students’ answers to this question will vary, the Court supports the delegation of discretion with the fact that criminal and civil sanctions are available if a teacher exceeds what is reasonable force.

The Court held that the Eighth Amendment does not apply to discipline in public schools, and therefore corporal punishment is not cruel and unusual. Why does the Court decide that the Eighth Amendment only applies to individuals convicted of crimes?

- The Court states that the Framers of the Constitution only intended for the Eighth Amendment to protect people charged with crimes, not merely school infractions, and thus the Court should not extend the Amendment to situations it was not intended to cover. The majority of the Court also seems to believe that prisoners are more in need of the protections of the Eighth Amendment as compared to students because of the nature of incarceration. A student, the Court states, is free to go home at the end of the day and be surrounded by friends and family who will look out for the student. The inmate, on the other hand, is incarcerated, separated from protective family and friends, and confined to an environment where brutality is common. Therefore, in the opinion of the majority, the Eighth Amendment provides one of the few protections afforded to an inmate.

The petitioners argued that by limiting the Eighth Amendment to only criminal charges, the Court was giving more rights to inmates than students. Do you agree? In regards to this argument, what rule did Justice White propose in his dissent?

- See previous answers for the Court’s opinion on how the Framers did not intend for the Amendment to apply to the school context and how the majority of the Court believes prisoners are in greater need of the protections of the Eighth Amendment than students.
- Justice White argued that if punishment violates the cruel and unusual punishment clause for prisoners, then it should not be imposed as punishment for school infractions.

## **Corporal Punishment in the Aftermath of Ingraham v. Wright**

Ingraham v. Wright was a major disappointment to the opponents of corporal punishment in school, but they redoubled their efforts in the states over the next two decades. At the time of the decision, as previously mentioned, only two states banned corporal punishment, but as you will see in the handout below, only twenty states continue to allow the practice today.

Additionally, courts have given students the ability to recover money damages against schools where there is a severe injury and the force applied was wholly disproportionate to the underlying problem or misbehavior. Garcia v. Miera (1987) and Metzger v. Osbeck (1988) are two well-known examples of such kinds of cases.

### **Exercise – Evolving Standards of Decency and Corporal Punishment in Your School**

The Supreme Court has often said that the Eighth Amendment prohibits two kinds of government practices: those that were cruel and unusual when the Constitution was written and those that offend the “evolving standards” of decency of the society. The following exercise is intended to get the students thinking about how the standards of American society have change throughout time. More specifically, the research conducted will demonstrate how a practice such as corporal punishment, which was once widespread, is now prohibited in most areas of the country.

As mentioned in the majority opinion in Ingraham v. Wright written in 1977, only two states at that time, Massachusetts and New Jersey, had prohibited corporal punishment in their public schools. Divide the class into groups and have the students discuss whether or not they believe corporal punishment is still allowed in their school district. After this discussion, have the children research the corporal punishment policy in their state.

Each state’s corporal punishment law and statistics can be found on the attached handout titled “U.S.: Corporal Punishment and Paddling Statistics by State and Race.” Give this handout to the class after you have reconvened from the research assignment and discuss what the handout says about your state.

Also, address what the handout says about the disproportionate infliction of corporal punishment based on race. How do the students feel about these statistics? Why do they think it is disproportionate? Does this seem to be a greater problem in certain parts of the country as opposed to others? If the student was originally supportive of corporal punishment, do these statistics change the way they feel about the use of corporal punishment now?



<b>State</b>	<b>Year</b>	<b>Present Statute</b>
Alaska	1989	AK Statutes Section 04AAC 07.010
California	1986	CA Education Code Section 49000-49001
Connecticut	1989	CT Penal Code Sec. 53a-18
Delaware	2003	DE Education Code Sec. 702
District of Columbia	1977	DC Municipal Regulations, Regulation 2403
Hawaii	1973	HI Rev. Statutes Sec. 302A-1141
Illinois	1993	IL Compiled Statutes, School Code Sec. 5/24-24
Iowa	1989	IA School Code Sec. 280.21
Maine	1975	ME Criminal Code Sec. 106
Maryland	1993	MD Code Education Sec. 7-306
Massachusetts	1971	MA General Laws , Education Sec. 37G
Michigan	1989	MI Compiled Laws, Rev. School Code Sec. 380.1312
Minnesota	1989	MN Statutes Sec. 121A.58
Montana	1991	MT Code Annotated Sec. 20-4-302
Nebraska	1988	NE Rev. Statutes Sec. 79-295
Nevada	1993	NV Rev. Statutes Sec 392.4633
New Hampshire	1983	NH Rev. Statutes Ann. Sec. 627:6
New Jersey	1867	NJ Permanent Statutes, Education 18A:6-1
New York	1985	NY Regulations of the Board of Regents, 8 NYCRR 19.5
North Dakota	1989	ND Century Code, Elem. and Sec. Education Sec. 15.1-19-02
Ohio	2009	Oh. Rev. Code Sec. 3319.41
Oregon	1989	OR Rev. Statutes Sec. 339.250
Pennsylvania	2005	22 PA Code CHS. 7 and I2, Sec. I2.5
Rhode Island	1977	Wolfweseder v. Woonsocket, Commissioner of Education
South Dakota	1990	SD Codified Laws, Sec. 13-32-2
Utah	1992	UT Administrative Rule R277-608
Vermont	1985	VT Statutes, Education Sec. 1161a
Virginia	1989	VA Code, Education Sec. 22.1-279.1
Washington	1993	WA Administrative Code 180-40-235
West Virginia	1994	WV Code Sec. 18A-5-1 (e)
Wisconsin	1988	WI Statute Sec. 118.31

\*Dates listed are when the law was enacted, unless otherwise noted.

Some states banned corporal punishment by law and some by regulation. Some states banned corporal punishment by removing permission for its use. Contact [info@stophitting.org](mailto:info@stophitting.org) for specific information.

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## Corporal Punishment in U.S. Public Schools

2005-2006 School Year: data released March, 2008. In the 2005-2006 school year, **223,190** school children in the U.S. were subjected to physical punishment. This is a significant drop of almost 18%, continuing a steady trend from the early 1980's.

State	Number of Students Hit	Percentage of Total Students
Alabama	33,716	4.5
Arkansas	22,314	4.7
Arizona	16	<0.0
Colorado	8	<0.0
Florida	7,185	.3
Georgia	18,249	1.1
Idaho	111	.04
Indiana	577	.05
Kansas	50	.01
Kentucky	2,209	.3
Louisiana	11,080	1.7
Missouri	5,159	.6
Mississippi	38,131	7.5
North Carolina	2,705	.2
New Mexico	705	.2
Ohio	672	.04
Oklahoma	14,828	2.3
South Carolina	1,409	.2
Tennessee	14,868	1.5
Texas	49,197	1.1
Wyoming	0	0

**The 10 worst states, by percentage of students struck by educators in the 2005-2006 school year:**

Rank	State	Percentage
1	Mississippi	7.5
2	Arkansas	4.7
3	Alabama	4.5
4	Oklahoma	2.3
5	Louisiana	1.7
6	Tennessee	1.5
7	Texas	1.1
8	Georgia	1.1
9	Missouri	.6
10	Florida	.3

Notes:

African-American students comprise 17% of all public school students in the U.S., but are 36% of those who have corporal punishment inflicted on them, more than twice the rate of white students.

Almost 40% of all the cases of corporal punishment occur in just two states: Texas and Mississippi, and if we add Arkansas, Alabama and Georgia, these five states account for almost three quarters of all the nation's school paddlings.

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## Number of Students Struck Each Year in U.S. Public Schools

YEAR	# WHITE %	# BLACK %	TOT. KIDS HIT %
1976	992,675 65	447,314 29	1,521,896 3.5
1978	940,467 65	411,271 29	1,438,317 3.4
1980	901,032 64	403,386 29	1,408,303 3.4
1982	no statistical projection was made this year		
1984	852,427 64	374,315 28	1,332,317 3.3
1986	659,224 60	345,411 31	1,099,731 2.7
1988	549,572 61	255,296 28	898,370 2.2
1990	346,488 56	208,543 34	613,760 1.5
1992	295,050 53	215,684 39	555,531 1.3
1994	256,363 54	182,394 39	470,683 1.1
1997	241,406 53	178,114 39	457,754 1.0
1998	199,572 55	135,523 37	365,058 0.8
2000	181,689 53	132,065 39	342,038 0.7
2003	159,446 53	115,819 38	301,016 0.6
2004	143,002 53	104,627 38	272,028 0.57
2006	119,339 53	79,613 36	223,190 0.46

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## About the Study:

The above data and more information about the study can be found at the U.S. Department of Education, Office for Civil Rights <http://ocrdata.ed.gov/>

Here's how to find corporal punishment data for your school district and school:

To get corporal punishment data from your school or school district, go to this website:

<http://ocrdata.ed.gov/>

Depending on whether you are searching for district survey results or results from a specific school, go to the "school search" or "district search" screen, fill out the form field, check the latest year of available data, and press "Search."

On the right side of the screen that comes up, go to "DISCIPLINE."

To find out the number of students receiving corporal punishment, choose from among the options on

discipline – Discipline and Disability, Discipline of Students With Disabilities and Discipline of Students Without Disabilities.

The latest data available is for the 2006 year. 2006 Civil Rights Data Collection contains information on 5,929 public school districts and 62,484 schools in those school districts. Your district and school may not be among those not sampled. You can also request a copy of your school district's corporal punishment statistics (school building and district information) from previous years from the district board of education office. Corporal punishment data is public information.

Center for Effective Discipline July 1, 2010.