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be decided in the concrete factual context of the individual case."[22]

The dissent written by Mr. Justice Marshall accuses the majority of turning its back on the principles which the Court has followed in the past. By ruling that the fact of the lawful arrest always establishes the authority to conduct a full search of the arrestee's person the Court has abrogated the holding in *Go-Bart Co. v. U.S.*[23] where the Court examined the Fourth Amendment requirement of reasonableness stating, "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances."

While the Court has ruled that an arrest may not be used as a pretext to search for evidence,[24] this might be the unfortunate offspring of the Court's decision. The far-reaching effects of Robinson will be felt in the near future if not already.[25]

CONCLUSION

The result of the Supreme Court's decision cannot help but create a visceral reaction. It does not take a legal scholar to find fault with a ruling that will allow citizens, who may be guilty of a minor traffic offense, to be subjected to a full search by some over zealous police officer. Where does a person's right to privacy begin? Where is the line of demarcation drawn between the legitimate interests of society and the rights of a citizen to be protected against such intrusions? Would it be permissible for the arresting officer to search a man's wallet or a lady's pocketbook while making an arrest for going through a red light? After reading the Court's interpretation of the right to search this might be possible.

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Corporal Punishment in the Schools: Ware v. Estes

A somewhat innovative approach to the limitation, if not the abatement, of corporal punishment in the public schools was initiated by a group of

[23] 282 U.S. 344, 357 (1931).

[24] U.S. v. Lefkowitz, 285 U.S. 452 (1932).

[25] *See also*, Gustafson v. Florida 94 S.Ct. 488 (1973). Defendant was convicted of unlawful possession of marihuana. At his trial the state introduced into evidence marihuana which had been seized from him during a search incident to his arrest on a charge of driving without an operator's license. The arresting officer did not indicate any subjective fear of defendant nor did he suspect that the defendant was armed. The District Court of Appeals of Florida, Fourth District reversed the conviction, holding that the search which led to the discovery of the marihuana was unreasonable under the Fourth and Fourteenth Amendments. Gustafson v. State, 243 So. 2d 615 (4th D.C.A. Fla. 1971). The Supreme Court of Florida reversed, 258 So. 2d 1 (Fla. 1972). The Supreme Court affirmed the Supreme Court of Florida citing U.S. v. Robinson.

Dallas, Texas, parents in *Ware v. Estes.*[1] The 1971 memorandum opinion of this United States District Court case states:

> In this suit the Court is called upon to resolve another conflict between the Constitution and the campus. The plaintiffs seek to restrain the defendants from administering corporal punishment in the Dallas Independent School District without the prior permission of the parent or student on the grounds that it violates rights guaranteed by the Eighth and the Fourteenth Amendments to the United States Constitution. The cause is dismissed because the claims are not substantial.[2]

This case grew out of a suit by the parents of two black children who objected to the city's policy of allowing principals to paddle students without prior permission from the parents. The Court heard the suit as a class action under Federal Rule of Civil Procedure 23(b). Evidence was introduced to show that one of the plaintiffs, Roderick Oliver, was knocked unconscious by an assistant principal when he allegedly directed an obscenity at the administrator.[3] The Court pointed out that if corporal punishment is unreasonable or excessive, it is no longer lawful, and the perpetrator of it may be criminally and civilly liable. Yet recognizing that some of the seven thousand teachers in the Dallas School System have abused the practice of corporal punishment, the Court nonetheless rejected the presumption that this made the policy itself unconstitutional.

Although the Dallas School System is not compelled to use corporal punishment for disciplinary purposes, it is allowed to use it by Texas statute.[4] This statute immunizes teachers from assault and battery charges in the exercise of the right of moderate restraint given by law to the teacher over the student as well as to the parent over the child.

Statutes in other jurisdictions tend to deal with corporal punishment in the same permissive manner. Only three states—Massachusetts, New Jersey, and Maryland—have abolished corporal punishment altogether[5] and certain school districts in some jurisdictions have abolished corporal punishment.[6]

A series of Supreme Court decisions dealing with the constitutional rights and liberties of students culminated in *Tinker v. Des Moines Independent Community School District.* The Court there stated:

> It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school-

[1] Ware v. Estes, 328 F. Supp. 650 (N.D. Tex. 1971), *Aff'd*, 458 F.2d 1360, *cert. den.*, 409 U.S. 1027.

[2] *Id.* at 657-658.

[3] *Id.* at 658. The assistant principal was suspended from duties for several months and subjected to a criminal charge for assault upon a minor.

[4] TEXAS PENAL CODE ANNO. art 1142 (1961).

[5] NEWSWEEK, Dec. 4, 972, at 127.

[6] SCIENCE NEWS, Nov. 18, 1972, at 332. New York City, Washington, D.C., Boston, Pittsburgh, Baltimore and Chicago.

> house gate. . . . School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.[7]

In his reaction to the issue of students' rights under the Constitution, one South Carolina principal proclaimed: "The constitution of this school takes precedence over the United States Constitution."[8]

In *Drum v. Miller*,[9] a frequently cited case, in which a teacher threw a pencil and hit a student in the eye causing partial if not total blindness, the Supreme Court of North Carolina ordered a new trial with a corrected instruction, to wit:

> An act done by a teacher in the exercise of his authority, and not prompted by malice, is not actionable, though it may cause permanent injury, unless a person of ordinary prudence could reasonably have foreseen that a permanent injury would naturally or probably result from the act.[10]

The lower Court's instruction viewed as needing correction was:

> Before returning a verdict for the plaintiff, you must find that the defendant was, at the time, able to foresee, by the exercise of ordinary care, not only that injury would result, but that the particular injury which was received by the plaintiff would be the natural and probable consequence of his act.[11]

The reviewing court felt that this instruction had great weight with the jury in deciding the case against the plaintiff and that he might have been and no doubt was seriously prejudiced thereby.[12]

Representative Margaret Keesee, R-Guilford, early in the current North Carolina General Assembly session, introduced legislation that would ban corporal punishment in schools, effective immediately.[13] School officials who were interviewed in Raleigh and Wake County said they would not favor abolition of corporal punishment in their schools. Some felt that alternative means of punishment must be present before spanking is banned. Reactions by some legislators were varied as may be seen by the following statements: "Corporal punishment is the best way to get at the bottom of the problem." "A little bit of paddling and a whole lot of understanding will go much further than no paddling and no understanding." "I used the paddle sparingly and found no adverse effects . . . I believe it's a valuable tool to be held in reserve."[14]

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[7] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
[8] TODAY'S EDUCATION, May 1973, at 20.
[9] Drum v. Miller, 135 N.C. 204, 47 S.E. 421 (1904).
[10] *Id.*
[11] *Id.* at 422.
[12] *Id.* at 425-426.
[13] News and Observer (Raleigh, N.C.), Jan. 28, 1974, at 19, col.1.
[14] *Id.*

The North Carolina General Statutes states the following in dealing with corporal punishment:

> * * * Principals and teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or by law which prohibits the use of such force as is specified in this section.[15]

Ms. Keesee's proposed legislation would apply equally to public and private schools in North Carolina and would only permit force to stop a disturbance that could result in injury to others, to obtain possession of weapons, for self defense or to protect people and property. Currently reasonable force may be used to restrain or correct pupils and maintain order.

One reason set forth by opponents of corporal punishment in the schools is that though it is *illegal* for public employees to beat convicted felons and murderers, military personnel, or inmates of state institutions, or for citizens to beat their wives or servants, it is still legal in most states in the United States to inflict corporal punishment on school children as a means of maintaining discipline.[16]

Some quotations from Ms. Adah Maurer, a recognized authority in child psychology of Berkeley, California will set in perspective the position of the opponents of corporal punishment:

> Shocking, regressive, and medieval. Two extreme reactions can result when children are spanked regularly and hard. One child might simply collapse. His ego—his feeling of being worthwhile—just goes down the drain. He begins to accept the idea that he is evil and that he deserves punishment. The other extreme reaction is violent resentment. The abuse inflicted by those closest to the child can evoke the need in him as an adult to use brutality, either with himself or others, to come to a sexual climax. The beaten child can face a lifetime of sexual maladjustment. In a heterosexual world, he might find one day that he is a homosexual. On the other hand beaten children have also become sadists and masochists.[17]

Different reasons are given by other groups seeking to abolish corporal punishment.[18]

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[15] N.C. GEN. STAT. § 115-146.

[16] TODAY'S EDUCATION, Dec. 1972, at 60.

[17] PTA MAGAZINE, June 1973, at 25-26.

[18] "Paddling our children has served litle purpose, except perhaps to teach them that it is all right for adults to beat people smaller than themselves." EDUCATION DIGEST, May 1973, at 48. "Educators abhor physical violence of persons toward each other. No teacher consciously wants to inflict pain, either physical or psychological, upon a young person. . . ." TODAY'S EDUCATION *supra* note 16, at 60. "The use of physical violence on school children is an affront to democratic values and an infringement of individual rights. It is degrading, dehumanizing and counterproductive approach to the maintenance of discipline in the

In *Ware v. Estes*, Dr. Nolan Estes, Superintendent of the Dallas Independent School District, testified that the District policy on corporal punishment was adopted after a conference with Professor B. F. Skinner of Harvard University, a recognized authority on child and educational psychology. Dr. Skinner's position is that in some cases physical punishment will be helpful.[18] However the Court refused to pass upon the wisdom of corporal punishment as an educational tool or a means of discipline. It simply held that the evidence did not show the policy on corporal punishment to be arbitrary, capricious, unreasonable, or wholly unrelated to the competency of the state in determining its educational policy.[19]

Some important procedural aspects of a suit involving corporal punishment were passed on in *Tinkham v. Kole*[20] in which a teacher slapped a thirteen year old student causing damage to his eardrum. The Court stated the problem as being: Whether under the facts and circumstances as presented, a question exists for the jury on the reasonableness of the punishment administered. In ruling against the plaintiff, the Court indicated that plaintiff not only failed to cite a decision of a court which holds a jury question on reasonableness of punishment in a case of this kind, but also treated the question of reasonableness as one of law. It was his burden to prove the punishment was unreasonable under the circumstances. The reasonableness of the punishment here was a question of fact for the jury, not one of law for the Court.[21] The Court outlined the factors in privileged punishment as being: 1) the means of administering punishment, 2) the extent of injury, 3) the nature of plaintiff's misconduct, 4) the teacher's motive in administering discipline.

Similarly *Suits v. Glover*[22] declares the standard of liability as follows:

> To be guilty of an assault and battery on his pupils, a school teacher must not only inflict immoderate chastisement, but must do so with legal malice or wicked motives, or must inflict some permanent injury.[23]

Currently the opponents of paddling are greatly distressed over the failure of their efforts to eliminate it from the school system. On the other hand, those who favor keeping the big stick philosophy alive do so until a better method presents itself. A solution to the problem should come from the creative efforts of those who deal directly with it, and know it best. This is preferable to attempting to find an original solution in legis-

classroom and should be outlawed from educational institutions in American society." SCIENCE NEWS *supra* note 6. "Not only does physical punishment not work, it also alienates children from learning." *Id.* at 333.

[19] Ware v. Estes, 328 F. Supp. at 659.
[20] Tinkham v. Kole, 252 Iowa 1303, 110 N.W. 2d 258 (1961).
[21] *Id.* at 262-263.
[22] Suits v. Glover, 260 Ala. 449, 71 So. 49 (1954).
[23] *Id.* at 468.

lation. On November 20, 1972, the United States Supreme Court declined to hear an appeal of *Ware v. Estes*. This leaves us without a ruling on the constitutional merits of the case by the court of last resort. In the meantime, *the beat goes on.*

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