

HUMAN RIGHTS COMMISSION

Discussion Draft Paper No.1

Corporal Punishment in
Schools and the Rights
of the Child

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**CORPORAL PUNISHMENT IN SCHOOLS AND THE
RIGHTS OF THE CHILD**

Introduction

The Commission has been approached by the Parents and Teachers Against Violence in Education Organisation (PTAVE) which has a committee of advisers drawn from the Senate, the churches and the legal profession. Specifically, PTAVE has asked the Commission to draw the attention of State Ministers for Education to **Australia's** obligations as a signatory of the International Covenant on Civil and Political Rights. PTAVE also wish to know what action the Commission considers should be taken with respect to the A.C.T. Education **Authority's regulations** on physical punishment which it claims currently discriminate between males and females.

2. Because of the general interest of this subject, and the wide ranging views held, the **Commission** has felt that before reaching a **conclusion** it should issue a discussion paper. This is designed to set out the main issues and to provoke discussion of an important topic that has already received a good deal of attention overseas, particularly within the framework of the European Convention on Human Rights.

3. It is the Commission's ultimate intention to advise the Federal Government as to the need or otherwise for legislative and administrative changes in this area. However, if sufficient public interest is evident following the circulation of this paper, the Commission will first arrange to bring together groups holding different view points in order to discuss this issue in the A.C.T.

4. This is a preliminary discussion paper. Its intention is to provoke discussion by raising the issues and not to lay down any final decision. The Commission welcomes all suggestions and especially those which bear in mind that its mandate is to examine this issue from the view point of the rights of the child.

Decisions by the European Court of Human Right's

5. The first relevant case to come before the Court concerned corporal punishment administered under the criminal law of the Isle of Man. In 1972, Anthony Tyrer, then aged 15, had been birched for unlawful assault. Tyrer had actually attacked a senior boy at his school for having reported him for taking beer into the school for which he, Tyrer, had been caned. Under the Summary Jurisdiction Act 1960 of the Isle of Man, a male aged 10 to 16 can be birched for unlawful assault or using provoking language or behaviour tending to a breach of the peace.

6. Judicial corporal punishment of adults and juveniles was abolished in England, Wales and Scotland in 1948 and in Northern Ireland in 1968. However, as recently as 1978 a petition in favour of the retention of judicial corporal punishment was signed by two thirds of the electorate on the Isle of Man. The chief argument used was that the punishment would deter hooligans coming over to the Island.

7. When Tyrer came of age he tried to withdraw his case but the European Court decided that the case raised questions of a general character affecting the observance of the European Convention on Human Rights which necessitated a further examination of the issues involved.

8. The Court held by six votes to one that the judicial corporal punishment inflicted on Mr Tyrer amounted to degrading punishment within the meaning of Article 3 (which very closely parallels Article 7 of the ICCPR. See Appendix A).

"The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence, that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State. Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects.

The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.

The Attorney-General for the Isle of Man argued that the judicial corporal punishment at issue in this case was not in breach of the Convention since it did not outrage public opinion in the Island. However, even assuming that local public opinion can have an incidence on the interpretation of the concepts of "degrading punishment" appearing in Article 3, the Court does not regard it as established that judicial corporal punishment is not considered degrading by those members of the Manx population who favour its retention: it might well be that one of the reasons why they view the penalty as an effective deterrent is precisely the element of degradation which it involves. As regards their belief that judicial corporal punishment deters criminals, it must be pointed out that a punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control. Above all, as the Court must emphasise, it is never permissible to have recourse to punishments which are contrary to Article 3, whatever their deterrent effect may be."

European Court H.R., Tyrer Case, Judgment of 25 April 1978, Series A No.26, paragraphs 33 and 31.

9. The one dissenting voice was that of Judge Fitzmaurice, who accurately pointed out that the Court had in fact argued against all institutionalised corporal punishment. His view was that corporal punishment of juveniles was not degrading since he had been educated under a system according to which the corporal punishment of schoolboys was regarded as the normal sanction. 'Yet I cannot remember that any boy felt degraded or debased' (Paragraph 12 of his opinion).

10. The Court was not required to judge whether the Manx legislation discriminated on the grounds of sex or age, but did note that it would be extremely difficult to maintain that it did not.

11. The next case concerning corporal punishment also involved the United Kingdom Campbell and Cosans v. United Kingdom (opinion of the Commission, 3E.H.R.R.531, Judgment of the Court 4E.H.R.R.293). The issue in this case was whether a child's right to education was denied where he only had access to a state school which insisted upon corporal punishment. Campbell merely faced a risk of corporal punishment but ,Cosans, at age 14, had been suspended from school for one year for refusing to accept 'six of the best' for intending to take a forbidden short cut through a cemetery.

12. The European Court found by six votes to one that the right to education of Jeffrey Cosans had been breached and that individual parents have a right to have their philosophical objections to corporal punishment respected by state schools. Once again the one dissenting voice was a British voice: that of Judge Sir Vincent Evans. He held that respect for the philosophical convictions of the parents did not extend to respect for their views on corporal punishment and that, in any case, the United Kingdom's reservation concerning compatibility with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure covered this eventuality. This was because he could not envisage a system

where children were treated differently within a single class and the provision of separate classes would prove to be too expensive. Sir Vincent said, 4E.H.R.R.293 at 312:

"It seems to me essential that any system of discipline in a school should be seen to be fair and capable of being fairly administered, otherwise a sense of injustice will be generated with harmful consequences both for the upbringing of the individual and for harmonious relations within the group. It will also place the teacher in an impractical position to administer discipline fairly if children in the same class have to be treated differently according to the views of their parents. It has been pointed out that, where corporal punishment is used, exceptions are in any event made in respect of girls and children suffering from a disability.. I believe that children will readily understand the reasons for this, but I think they are likely to regard it as arbitrary and unjust if Johnny is exempted simply because his Mum or Dad says so."

13. Summarising the views of the European Commission of Human Rights and the European Court of Human Rights it can be said that corporal punishment has been found to be contrary to the commonly accepted standards of the member States of the Council of Europe, and that judicially imposed corporal punishment constitutes degrading treatment. It has also been found that a child's right to education encompasses a right to attend a school where he or she will not be subject to corporal punishment contrary to the parents' wishes. British judges have consistently dissented from these views. However, at a government level there is "agreement in principle that the teaching profession should be encouraged to move towards the gradual elimination of corporal punishment as a measure of discipline in schools". There is a further problem in that no one would appear to advocate corporal punishment for girls yet to restrict it to boys would almost certainly be discriminatory. Such an objection might also be raised to a punishment restricted to a particular age group.

The Australian Constitution

Section 116. The Commonwealth shall not make any law for establishing any religion or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

14. In Europe legal provisions concerning religious freedom have been used by those opposed to the compulsory imposition of corporal punishment in state schools. The argument has been that corporal punishment is contrary to the religious or philosophical beliefs of some individuals and therefore should not be imposed upon them or upon their children. Section 116 of the Australian Constitution almost certainly would not be interpreted in this way. However, there might be problems if adherents of religious beliefs which are devoted to non-violence (such as the Quakers or the Buddhists) were forced to submit to corporal punishment.

15. Australia is a signatory to the UNESCO Convention Against Discrimination in Education. This Convention makes no specific reference to corporal punishment. However, the States Parties do undertake that their practices will not involve "inflicting on any person or group of persons conditions which are incompatible with the dignity of man"..

Victoria

16. In 1982, Mr Fordham, the Minister for Education, announced that it was the Government's view that corporal punishment should not be used in state schools. He explained that whilst he appreciated that there were some who did not share his view, he believed that the majority of parents and teachers saw that "a resort to physical force by adults over young children is not the way in which a spirit of co-operation and learning is developed". A working party has been established to implement this abolition decision (Ministerial Statement Legislative Assembly, 14 October 1982).

17. A draft statement from the Catholic Education Commission in Victoria has recommended that corporal punishment be banned in Catholic schools. It states "any sanction that is likely to cause physical or psychological damage to students is unacceptable in a christian environment". Sister Marie Therese who chaired the working party which formulated the statement said that corporal punishment was very rarely used in Catholic schools in Victoria. She added that the working party has not considered corporal punishment to be the worst sanction against the student: 'the sarcastic remark from a teacher could be more damaging to the child'.

New South Wales

18. The New South Wales Teachers' Federation, the Federation of Parent and Citizen Associations, the Education Department and a series of education Ministers have called for the abolition of corporal punishment in state schools. However, following discussions on their discipline policies by parents and teachers, some 70% of state schools have decided to retain the cane (Sunday Telegraph, 6 February 1983).

.Northern Territory

19. The proposed regulations to the Education Act would place corporal punishment in a school at the discretion of the principal. Parents would be able to express their wishes, but the principal would have the final decision. PTAVE is protesting against this proposal.

20. The remaining States all have education regulations laying down the conditions under which corporal punishment may be imposed. In each State this is at the discretion of the school principal. The Western Australian and Tasmanian Educational Departments actively discourage the practice of corporal punishment in schools. At the secondary level, corporal punishment of girls is not permitted.

The Swedish Legislation

21, In 1977 the Swedish Riksdag appointed a special Children's Rights Committee to examine priority questions of children's rights which would be embodied in legislation. Their first proposal was a unanimous recommendation of a draft bill making all forms of physical punishment or other injurious or humiliating treatment of children illegal. A revised Bill introduced by the Government was passed into law in March 1979 specifying that:

A child may not be subjected to physical punishment or other injurious or humiliating treatment."

Should physical chastisement meted out to a child cause bodily 'injury or pain which is more than of a very temporary duration, it is classified as an assault and is an offence under the Criminal Code. Trivial offences are not taken up, either because they cannot be classified as assault or because an action is not brought. Threatening, scaring or ostracising a child, locking it up or making it feel ridiculous are considered as being injurious and humiliating treatment and are therefore forbidden.

22. Until 1966 the Swedish Legal Code relating to Parenthood and Guardianship specifically allowed parents to administer physical punishment to their children. Thus there was only a thirteen year interval between removing the legal

sanction for parental corporal punishment and making such punishments illegal. There would appear to have been two factors which had a special influence in the Swedish case. One was the fact that in Northern Sweden where grandparents played a major role in child-rearing, beating was traditionally considered to be cruel and humiliating. There is also a strong Swedish belief that corporal punishment inhibits the formation of a self-regulating conscience. This is because children who are hit expend the energy which might have been used in regretting the punished action in resentment against the person who hit them. A child who respects the adult punisher and the justice of the punishment may accept corporal punishment without resentment, but a child who is already 'agin the authorities' will simply become more rebellious.

The United States

23. As early as 1853, an Indiana court laid down the following conditions for a teacher imposing corporal punishment:

"Whenever he undertakes to exercise it, the cause must be sufficient, the instrument suitable to the purpose; the manner and extent of the correction, the part of the person to which it is applied, the temper in which it is inflicted, all should be distinguished with the kindness, prudence, and propriety which become the station."

Cooper v. McJunkin, 4 Ind. 290.

Individual cases have established that a teacher has no right to administer corporal punishment upon a pupil to enforce a.. unreasonable rule (Berry v. Arnold School District, 199 Ark. 1118, 137 S.W. 2d. 256 (1940)); and that only the person directly responsible for maintaining order and discipline over the pupils may administer corporal punishment (Suits v. Glover 260 Ala. 449 So. 2D 49 (1954)). Between 1958 and 1965, six States enacted laws expressly permitting the use of corporal punishment in public schools. New Jersey has expressly forbidden such punishment since 1940 (N.J. Stat. Ann. S. 19-1).

Almost all States have laws forbidding cruelty to children and it has been suggested that excessive physical chastisement would be covered by these statutes as well as by penal code definitions of assault and battery.

24. An early case determined that a teacher could not lawfully administer corporal punishment in a case where the father's instructions were counter to those of the teacher (Morrow v. Wood, 35 Wis, 59, 17 Am. Rep. 471 (1874)).

25; In the early 1970s, after a three year battle, Massachusetts outlawed all forms of corporal punishment in its schools and correctional facilities. Numerous law suits in federal courts sought to establish that the constitutional rights of children are infringed where they are subjected to corporal punishment in public facilities.

26. As of March 1983, the situation is that there have been two challenges to the right of teachers to use corporal punishment, both of them unsuccessful. The Supreme Court ruled that the 8th Amendment to the Constitution, which covers cruel and unusual punishment, applies only to convicted criminals and not to school children. Thus rulings in regard to school discipline are left to the States and to the individual communities. Four States forbid all forms of corporal punishment. One State forbids the use of instruments and permits hand spanking only. One State requires prior written parental approval before the child may be hit. Several States permit parents to file an objection for their child, thus protecting him or her. Other States have a variety of controls: records must be kept; only the principal may use a paddle to hit a student; corporal punishment may not be used for academic reasons; other methods must be tried first etc. Most major cities forbid corporal punishment in schools and many hundreds of smaller school districts are debating the question. In New York State the Board of Regents has asked the legislature to rule corporal punishment illegal. Records concerning corporal punishment are kept by the Office of Civil Rights of the

Department of Education in Washington, but their primary concern is that racial minorities not be treated less well than the dominant ethnic group.

The Case for Corporal Punishment in schools

27. It is very difficult to find a reasoned argument in favour of the imposition of corporal punishment in schools. Judge Fitzmaurice held that corporal punishment of juveniles was not degrading and was indeed often the preferred punishment of boys facing the alternative of learning pages of Virgil by heart, but he was not prepared to advocate the practice. A common reaction is to say that it does no harm but this would appear to be a reaction which varies between classes.

28. The case for corporal punishment generally includes a combination of the following elements:

1. A short, sharp, but not unreasonable shock is the most effective punishment and often clears the air;
2. Violence should be met with violence;
3. Boys prefer it to the alternatives;
4. In some cases, nothing less will prevent a recurrence of the 'crime';
5. Parents favour the punishment. Opinion polls generally show that the majority of parents favour corporal punishment in schools. Currently there is a 'law and order' move in this direction;
6. Corporal punishment is a 'natural' corollary of the school's role in loco parentis; and

7. Many other punishments, or even non-punishments such as being held up to ridicule before the class, may inflict greater damage on the psyche of a child than corporal punishment.

The Case Against Corporal Punishment in Schools

29. On average, those who are opposed to corporal punishment in schools are clearly more articulate than the proponents of the practice. Their arguments tend to centre on the rights of the child rather than the needs of the school. Essentially, their claim is that children are either too young to be rational and hence should not be punished in this way, or they are old enough to be treated as adults in which case they should be treated with the same respect.

30. Individual points which have been raised include:

1. It denies the child's personal dignity and physical integrity;
2. It teaches that might is right and institutional violence is acceptable;
3. It breeds resentment;
4. It is now accepted as inappropriate for adult prisoners, the disabled and females, why should it be good for juvenile males?
5. Parents who batter their children often see their own behaviour as being justified or legitimised by corporal punishment in schools;
6. It damages the punisher equally with or more than the person punished;

14.

7. Teachers who can only maintain discipline with the use of physical punishment are not suited to teaching;
8. It is totally unconstructive - those who break windows should learn how to repair them;
9. The fact that some boys prefer corporal punishment to the alternatives suggests that it may be low in deterrent power and effectiveness as a punishment;
10. It is probably the form of punishment which does most to enlarge the gap between "them and us" (i.e. teachers and students);
11. Looking at controversial cases of the use of corporal punishment in schools it would appear that most of the alleged 'crimes' were relatively trivial and the punishment was for questioning the authority of the school, often out of school hours, rather than for the 'crime' as such (see Appendix B for some reports of incidents of corporal punishment in schools prepared by PTAVE);
12. The Declaration of the Rights of the Child requires that 'the best interests of the child shall be the guiding principle of those responsible for his education'. Corporal punishment might possibly be seen to be in the best interests of the school but not in the best interests of the child who is to be punished;
13. Whilst the British educational system and other British influenced systems allegedly would be unworkable without corporal punishment, the educational systems of Continental Europe and of many other countries manage very well without it;

14. The continuing debate amongst proponents of corporal punishment as to whether it should be reserved for primary or for secondary pupils provides good reasons for abolishing it altogether on the grounds that no age is generally accepted as appropriate for its imposition;
15. Parents who favour corporal punishment are still free to impose it at home, schools could request willing parents to administer it;
16. Corporal punishment has different implications depending upon the class of the child who is being punished. Whilst middle class boys may accept such punishment as part of the ethics of the school, working class boys may regard it as evidence of the moral bankruptcy of the school which preaches against violence but also practices it;
17. There are some sensitive individuals upon whom most thinking persons would not wish to impose corporal punishment. If such punishment is manifestly bad for such persons why should it be good for others? The Scottish Code of Practice in fact precludes the use of corporal punishment on "a pupil suffering from any kind of handicap - physical, mental or (when it is manifestly persistent and serious) emotional"; and
18. At common law the administration of physical chastisement by a teacher on a pupil is only lawful where the degree of force is reasonable and where the rule broken was itself reasonable *CB. v. Newport (Salop) Justices*, [1929] 2K.B.416(D.C.). Many of the rules for which pupils are corporally punished could have difficulty in meeting this test. Indeed, often there is no written rule which the pupil could have known of before the event.

The Rights of the Child

31. The Declaration of the Rights of the Child makes no explicit reference to corporal punishment although Principle 7 provides that the best interests of the child shall be the guiding principle in education. The preamble also states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection" (see Appendix C). Opponents of corporal punishment in schools would argue that special safeguards and appropriate legal protection should include protection from corporal punishment in schools; proponents would disagree.

32. In looking at the general debate on corporal punishment it can be said that almost all of those who speak in terms of the rights of the child are opposed to corporal punishment in schools. No argument that a child has a right to corporal punishment has been found. Indeed, the very language of 'rights talk' is opposed to such an idea.

33. In the recent American debates on children's rights considerable emphasis has been placed upon the argument that compulsory education makes schools in many ways equivalent to prisons since the children have no choice but to attend and to obey the directions of the teachers or to face punishment. Some continue with this line of argument to say that corporal punishment is equally inappropriate in schools and prisons. Others argue that the choice of punishment should be with the students and that a code of rules and penalties should be drawn up by consultation between teachers and students. One issue that is not clearly faced in many writings opposing corporal punishment in schools is whether such corporal punishment is acceptable (a) where the parents consent, (b) where the child chooses corporal punishment rather than an alternative punishment or (c) never. A perspective which focused on the rights of the child would not necessarily accept (b) either because corporal punishment is inherently undesirable or because a child in this situation rarely faces a genuine choice, being enmeshed in the constraints of the school system.

"Degrading Punishment"

European Convention on Human Rights

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

International Covenant on Civil and Political Rights

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

PTAVE Case Studies

Attached are some case studies prepared by PTAVE, of incidents, reported to it, of corporal punishment in schools.

We are grateful to PTAVE for giving us permission to reproduce these case studies.



CHILD ABUSE IN SCHOOLS — INCIDENT REPORT FORM

CASE NUMBER

Date report lodged: 2nd. February, 1982

BS16

1 INTERVIEWER

Name: Brian Stephenson
Address: 31 Dolphin Street
Raadwick 2031
Telephone: (02) 398 1076

2 INFORMANT

Relationship to child: **Eyewitness**
Source of his/her information: **Van**, the subject of this report,
and his classmates

3 BACKGROUND DATA

Place of birth: Saigon, Viet-nam
Age at time of incident: 21 **years** old
Sex: Male
Type of school (public, private non-denominational, church, co-ed, single sex, other): Public, Boys' High School, **N.S.V.**
Class or grade level: Year 9
Is English the primary language spoken at home?: No. Cantonese is spoken
Does the child have any characteristics, physical or other, that distinguish him/her from peers?: No. Many Asian students attend the school
Are there unusual or extraordinary circumstances surrounding the home environment of the child?: No. Van's immediate family (parents and siblings) are in Australia. His grandparents are in Viet-nam.

4 INCIDENT

Description of incident and events leading to it:

Van says that he was caned on two separate occasions during the 1981 school year. On the first occasion, he was in metal work **class** and a friend of his was using a water tap in the corner of the classroom to *wash* his hands. Not having something with which to dry his hands he flicked **the veteran's fingers** at Van, Van playfully began to chase his friend but was stopped by the class teacher and taken to the subject master's office. After hearing the teacher's report that Van had been running in the classroom, the subject master gave Van two strokes with the cane across the fingers of his left hand.

On a second occasion, Van and about ten other students in his **class failed** to bring their sports gear to school. According to Van, the sportsmaster made the students form a line and caned them one stroke each. He then forced them to wait on the sidelines and watch those students who had brought their gear playing soccer. On this occasion, the students caned in company with Van were Viet-namese and Van claims they "forgot" to bring their sports gear because they have no interest in the **team** sports played at the school. Of the students caned, two were aged 18; three were 19; two were 20 and one other student was the same age as Van, 21 years.

5 FREQUENCY

Have similar incidents occurred involving the same child and the same teacher? the same teacher with other children? the same child with other teachers?.

According to Van, **cuning** is a frequent occurrence at the school, and it is done by teachers of both

sexes. The age of the student does not appear to be a factor considered

COMPLAINT

Was a parent or legal guardian notified of the incident?:

By whom?:

How soon after the occurrence?:

Was a complaint lodged by a parent or legal guardian?:

With whom?:

Was it made in writing, by telephone, by personal communication, through another party?:

What was the response to and the outcome of the complaint?:

Van, embarrassed both times about being caned, did not tell his parents. He says that had he done so his parents would think he was failing their high aspirations. Also, he did not want them to feel the shame that he had felt. Van did share his thoughts with some of his Vietnamese classmates, some of whom suggested to him that if he had received the cane he must be at fault. That PTAVE informant saw Van's transgressions as warranting only a discussion with the teacher concerned obviously brought Van some *relief*.

7 EFFECT OF THE INCIDENTS

Were there physical and /or emotional consequences attributable to the incident/s?:

Yes

Physical: Especially after the first incident, but also after the second, Van found his finger tips swollen, bruising was visible, and he experienced great difficulty in fastening the buttons on his shirt, etc, as well as tying the laces of his shoes,

Emotional; As already indicated in Section 6 of this Incident Report, Van was embarrassed by the canings. It was obvious to the PTAVE informant that Van found his interview a catharsis, a chance to rationally and sympathetically discuss what had happened to him at the school.

8 MEDICAL CORROBORATION

Was medical advice sought?:

No

Was treatment prescribed?:

No

Is medical documentation available? (X-rays, photographs, reports, other):

9 MATTERS OF ONGOING CONCERN

Van and his *classmates* mentioned in Section 4 of this report have *been* living in Australia for less than three years. Difficulties with language and customs have often lead to misunderstandings between students and *school staff*. That students could be punished for not wishing to participate in a team sport is beyond Van's comprehension. He claimed the school makes no provision for the sporting interests of Asian students — swimming, basketball and table tennis despite there being a large percentage of *Asian* students at the school. Van expects to complete his formal secondary education later in 1982. He has already decided his career path which will involve him in further studies. Currently, Van participates in 'English Second Language' classes (ESL) at the school along with many other immigrant students. ESL classes are, for students who do not speak English with their families at home. The senior mistress responsible for those classes uses the cane.

CHILD ABUSE IN SCHOOLS — INCIDENT REPORT FORM

CAN NUMBER

Date report lodged: 3rd April, 1982

3217

1 INTERVIEWER

Name: Brian Stephenson
 Address: 31 Dolphin Street,
 Randwick,
 Telephone: (02) 398 10rm

2 INFORMANT

Relationship to child: rrinfitnest
 Source of his/her information: Briefer to BOOti 012 (4) INCIDENT

3 BACKGROUND DATA

Child's place of birth: Various
 Ago of child at time of incident: 14 years old
 Child's sex: Hale
 Type of school (public, private non-denominetonal,
 Church, co-ed, single sex, other): **Public, Boya ' High School, New South Vales**
 Class or grede level: Tear 9
 Is English the primary language spoken at home?: —
 Does the child have any characteristics, physical
 or other, that distinguish him/her from peers?: See Sectisse• 4
 Are there unusual or extraordinary circumstances
 surrounding ttse home environment of the child?: See Beata tux 4

4. INCIDENT Description of Incident and events loading to it:

PTAYE's INIPORMANT is Julie N., a former student teacher. At the time of the incident she was completing her B.A. Dip. Ed. and specialising in "Slow Learner Method". Her class comprised 15 students all of whom were classified an law academic achievers and in her General Activity Class for that reason. She says that two students in particular, Peter and Garry, required her constant individual attention due to both having emotional problems and disturbed behaviour. e.g. Peter had an obsession with hiding in the classroom locker and was unable to concentrate on any work for longer than a few minutes; Garry van unco-operative, belligerent and hostile.

By the end of the first term the class vas happy and responsive and the Informant felt both Peter and Garry were making measurable progress. One day, early in the second term while class vas in meanies, el Fora Mester entered the classroom and ordered three students oUtside into the corridor where he caned them. Two of the students were Peter and Garry. When they returned to the classroom all students were shoving signs of distress and Peter was crying. He remained sitting with his head on his desk for the remainder of the period. The Informant says she did not know why the students were punished and recalls that the Form Heater seemed oblivious to her presence in the classroom.

FREQUENCY

Have similar incidents occurred involving

the same child and the same teacher? the same teacher with other children? the same child with other teachers?:

The Informant states that caning was routine at the school and believes some teachers enjoyed doing it. Students were given between two and six hits. The punishments took place in the corridors and in the staff room. Not long after she started work at the school, the Informant says she was sitting in the staff room reading when a teacher brought a student in and caned him four strokes immediately behind her back. The student concerned in that incident was Garry (see Section 4). During the short time the Informant taught at the school she says Form Masters entered her class on three occasions, and without explanation, called students into the corridor for caning. Students explained to her that Form Miztore were on a roster to patrol corridors during every teaching period, and students found outside a classroom without a pass were caned automatically.

6 COMPLAINT

Was a parent or legal guardian notified of the incident?:

By whom?:

How soon after the occurrence?:

Was a complaint lotted by a parent or legal guardian?:

With whom?:

Was it made in writing, by telephone, by personal communication, through another party?:

What was the response to and the outcome of the complaint?:

It is not known if any of the students notified their parents about incidents at the school,

7 EFFECT OF THE INCIOENT/t

Were there physical and /or emotional consequences attributable to the incident/s?:
Yee. Both

Peter and Garry were severely affected by the incident describ.ed in Section 4 of this report. Their behaviour deteriorated, This resulted in both being continually in trouble with other teachers and to further canings. Garry underwent an immediate change of attitude and became more heotile and Le ge responsive. Peter went into "a shell".

MATTERS OF ONGOING CONCERN

The Informant believes that the authoritarian naturo of the school was a compensation for ineffectual teaching and that the efforts of good and caring teachers were negated by the heavy reliance some senior staff placed on punishment. She felt it was impossible for her to exercise her own skills in such an environment, particularly with the low statue accorded a student teacher. Her expectationz about taking a teaching post were that it would be a constant battle against the effects of caning, and that her teaching career was likely to be short. It vas. Quite soon after the incident described in Section 4 of this report, the Informant left the teaching profession.

Sate lodged: March 28, 1982

I INTERVIEWER

Name: Brian Stephenson

Address: 1131 Dolphin Street, Randwick, NSW

Telephone: (02) 398 1076

2 INFORMANT

Relationship to child: Mr & Mrs R. and their son Brett

Source of his/her information: Brett and classmates

3 BACKGROUND DATA

Place of birth: Sydney

Age of child at time of incident: Ongoing throughout formal education

Child's sex: Male

Type of school: Private

Non-denominational, church, other: Public, coed, N.S.S.

Class or grade: N/A

Is English the primary language spoken at home?: Yes

Does the child have any physical, mental

or other, that distinguish him/her from peers?: Epileptic. One of the characteristics of Brett's illness is frequent lapses of consciousness. These episodes last a fraction of a second, interrupt concentration, but are not noticeable to an observer.

Are there special circumstances surrounding the home environment of the child?: No

4 INCIDENT Description of incident and events leading to it:

Brett assumed the status of a 'discipline problem' during the first year of his education and remained so until he left school at 15. Canings were frequent throughout his school life, becoming most frequent in high school, where in one week he was caned on four separate occasions. The frequency and severity of these punishments were a source of great anxiety to Brett and his parents. Believing that Brett's problems somehow derived from physical or psychological problems, Mrs R. frequently visited the school to express her concern and to obtain advice. Generally, she received unsympathetic responses. Brett's principal told her '...you are over-protective...', '...Brett is just playing up to get attention...' The school counsellor who saw Brett and Mrs R. at that time was considerably more understanding but ineffectual. The principal said he didn't believe in psychology and that if he thought Brett needed a caning, he would give his one. Through Mrs R's persistence, Brett was tested by the Department's medical officer who diagnosed a hearing deficiency. The officer was strongly critical of Mrs R. for not having recognised this problem earlier and implied that she was a neglectful parent. Not satisfied, she took Brett to see a hearing specialist at the Bureau of Maternal and Child Health who set the hearing wrong with Brett's hearing. Then, Mrs R. took Brett for testing by a clinical psychologist. A portion of the report reads as follows: '...A 'weary test indicated that concentration and immediate recall are poor and performance showed fluctuating concentration and some confusion. A test of visual perception showed significant deficiencies in eye-hand coordination and spatial judgement. This indicates perceptual dysfunction which has handicapped his concentration and learning....' Several months later, Brett had his first epileptic seizure. Until then he was unaware he was epileptic.

5 EFFECTS OF THE INCIDENT

Caning was frequent at his first two schools. According to Brett, at the first high school, Fore Plasters (or the Deputy Principal) patrolled the corridors and students standing outside classrooms were taken to the staff room and caned, no questions asked. About a dozen canes of varying dimensions were kept in a set cabinet there. On one occasion, when Brett was to be caned, one Fore Master clasped all the canes together and swung them around in the air before selecting one to use. As discussed in INCIDENT 4, the usual response to Brett's behaviour was punitive. Not paying attention in class was the main source of irritation to his teachers and the reason, according to Brett, for most of the punishments. One of several canings described by him to the interviewer involved Mr R., head of the maths department, Mr R. required special co-operation of the student to earn the right to strike the blows until the student looked into his eyes and while caning, he would repeatedly say 'lock see in the eyes.' At the second high school, canings were different. The Principal at that school was held in high regard by the students because he preferred to 'talk it out' with a student to be disciplined. This was done privately over tea and biscuits followed by a ritualistic tap with the cane which, Brett says, was so gentle you could scarcely feel it.

COMPLAINT Action taken, if any, by parent/guardian; the school's response: (Described above.)

7 EFFECTS OF THE INCIDENT/5 Physical and/or emotional effects:

Though it is impossible to precisely differentiate between the effects on Brett due to his treatment by teachers and the effects of his illness, his family feels that the punishment-oriented schooling he received hindered his personal and intellectual development. CONTINUED OVER LEAF

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8 MEDICAL CORROBORATION 1-rays, photographs, medical reports, other:
copy :I psychologist's report on Brett is held by PIAVE. Extensive other records are available through the P. fatly.

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MATTERS OF ONGOING CONCERN

an: !.,r.s.R. are firmly convinced that ~~wo~~of the three public schools attended by Brett compounded his medical
proble~~n~~; and that instead of helping-him. trod on his.

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10 IDENTITIES

Does the informant agree to reveal all known identities

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relevant to this incident if requested ~~to do so~~.....PTAVE publications.....

by legal or educational authorities?: Yes

.....
The inform~~er~~ may be contacted by writing to: PIAVE IN.S.W1

DECLARATION OF THE RIGHTS OF THE CHILD

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

'Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may 'foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

