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STUDENT-ON-TEACHER VIOLENCE: A PROPOSED SOLUTION

I. INTRODUCTION

On January 23, 2015, a sixteen year-old freshman at John F. Kennedy High School in Paterson, New Jersey violently attacked his teacher, a sixty-two year old male.¹ The teacher subsequently filed a police report, which indicated that, at approximately 10:20 a.m., the student-assailant entered the classroom late while the teacher gave a lecture on physics.² The student was reportedly disruptive and, after continued outbursts, the teacher proceeded to “write him up.”³ The student then sat in his teacher’s chair (situated at the front of the class) and refused to return to his seat when ordered.⁴ The situation became violent after the teacher confiscated the student’s phone.⁵ The student immediately lunged at his teacher and grabbed him from behind.⁶ The teacher, although visibly upset, made no attempt to fight back or defend himself at any time during the confrontation.⁷ He remained immobile while in the clutches of the student-assailant, only moving when the student forcibly moved him.⁸ The student held his teacher in this position for several seconds before picking the teacher up and slamming him to the ground.⁹ Once down, the teacher remained motionless.¹⁰ The student-assailant then calmly reclaimed his cell phone from the teacher’s hands and

¹ Noah Cohen, *Teacher in Videotaped Classroom Attack Too Injured to Return to School, Union Says*, NJ ADVANCE MEDIA FOR NJ.COM (Jan. 28, 2015, 8:05 PM), http://www.nj.com/passaic-county/index.ssf/2015/01/post_4.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *New Jersey Teen Slams 62 Year Old Teacher For Taking Cell Phone In Class*, YOUTUBE (Jan. 26, 2015), <https://www.youtube.com/watch?v=pP7O7hf4yRI&spfreload=5> [hereinafter *New Jersey Teen*].

left the classroom.¹¹ As is becoming increasingly more common, the assault was video recorded and subsequently posted to YouTube, where it went “viral” within a matter of days.¹²

As horrifying and emotionally gripping as stories like these are, they are hardly uncommon: elsewhere in the nation, a twelve-year-old from Surprise, Arizona, smashed his teacher with a computer keyboard and then kicked and punched the teacher until he was restrained by a police officer;¹³ in Manchester, New Hampshire, an eighth-grader body-slammed his female teacher, leaving her on crutches for months;¹⁴ in Pittsburgh, Pennsylvania, a substitute teacher lost hearing in one ear after a group of students tossed an M-80 explosive into the classroom where the teacher was reading alone;¹⁵ in Chicago, Illinois, a student repeatedly struck his teacher in the face with a hammer, leaving her in need of serious reconstructive surgery;¹⁶ in Buffalo, New York, a student slammed a metal trash can into his teacher’s head, opening a gash that required thirty-two staples and more than forty stitches to close;¹⁷ and in St. Louis, Missouri, a fourth grade teacher collapsed and died of a heart attack after a physical altercation with a nine-year-old student.¹⁸ These are but a few instances of student-on-teacher violence within the last couple of decades, and the situation is worsening.

Returning to the student-on-teacher assault in Paterson, New Jersey, it is curious that the teacher made no attempt to defend himself or otherwise repel the student. The teacher was larger than the student—presumably stronger as well.¹⁹ He could have—at the very least—broken free of the student’s grasp, but he *chose* not to. This behavior raises questions: why would the teacher choose to remain passive in such a situation?

¹¹ *Id.*

¹² *Id.*

¹³ Michael D. Simpson, *When Educators Are Assaulted*, NEA.ORG, <http://www.nea.org/home/42238.htm> (last visited Mar. 3, 2016).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Noel M. Johnston, *The Chicago Public Schools and its Violent Students: How Can the Law Protect Teachers?*, 48 DEPAUL L. REV. 907, 907 (1999).

¹⁷ Carolyn Thompson, *Violence Against Teachers Often Ignored, Task Force Says*, THE CHRISTIAN SCIENCE MONITOR (Nov. 18, 2013), <http://www.csmonitor.com/The-Culture/Family/2013/1118/Violence-against-teachers-often-ignored-task-force-says>.

¹⁸ Simpson, *supra* note 13.

¹⁹ *New Jersey Teen*, *supra* note 10.

Why would he subject himself to risk of physical harm? Why did he not fight back?

The teacher's passivity is far from uncommon. In fact, when faced with student aggression, educators routinely elect to remain passive. Why is this? One possible explanation is that teachers worry they could be disciplined for defending themselves.²⁰ Indeed, a very real perception exists among educators that they risk losing their jobs if they lift a hand to student aggressors.²¹ Besides risking their tenure, teachers fear they could face civil or even criminal charges should they defend themselves.²² To illustrate this point, when questioned about the assault at John F. Kennedy High School—and why the teacher refused to fight back—Paterson's Education Association President, Peter Tirri, said, "Our [teachers] are concerned about being cited for abusing students . . . We're all kind of walking on eggshells about this."²³

This Comment attempts to shed light on the problem of student-on-teacher violence. Part II illuminates the problem generally, highlighting its prevalence in recent years through the use of statistical data. Part III outlines select statutory and non-statutory solutions that various states have developed to respond to this crisis and Part IV offers a simple proposal for ending the problem of student-on-teacher violence: educating students and teachers alike on educators' common law privilege of self-defense. Lastly, Part V, through discussion of the relevant case law, explores the contours and bounds of this common law right to self-defense.

II. STUDENT-ON-TEACHER VIOLENCE: THE SILENT NATIONAL CRISIS

The problem of student-on-teacher violence has been referred to as the "silent national crisis."²⁴ Indeed, in many ways this description is apt, as the issue rarely finds its way into national media headlines. In general, mainstream media

²⁰ Cohen, *supra* note 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ American Psychological Association, *Violence Against Teachers: A Silent National Crisis*, <http://www.apa.org/ed/schools/cpse/activities/violence-against.aspx> (last visited Mar. 3, 2016).

attention focuses on only the most extreme acts of school violence, like the mass shootings at Columbine High School and Sandy Hook Elementary School. While perhaps a phenomenon that is overlooked, student-on-teacher violence is pervasive (particularly in public schools) and affects hundreds of thousands of educators every year.

Illustrative of this point are a handful of studies conducted by the Department of Education's Institute of Education Sciences.²⁵ The studies investigated the number of teachers nationwide—both in public and private schools—that reported having been physically attacked by a student during the school year. One particular study covered the 1993–1994 school year, as well as the 1999–2000 school year.²⁶ In 1993–1994, 121,100 teachers reported being assaulted by a student.²⁷ In 1999–2000, that number rose to 134,800.²⁸ This indicates that roughly four percent of all teachers nationwide experienced violence at the hands of their pupils during those years.²⁹ This percentage has, since the 1990s, stayed constant, spiking only in 2011–2012 when it was 5.4%.³⁰ That year, a record 209,800 private and public school teachers reported being physically attacked by a student.³¹ While 209,800 teachers may not seem like much, it outnumbers the entire population of Salt Lake City, Utah.³²

Also important to note is the divide among public and private schools with regards to this problem. As previously noted, 209,800 teachers (public and private) reported being attacked by a student in the 2011–2012 school year.³³ Of those attacks, 197,400 took place in a public school, whereas only

²⁵ U.S. Department of Education, National Center for Education Statistics, *Fast Facts*, INSTITUTE OF EDUCATION SCIENCES, <http://nces.ed.gov/fastfacts/display.asp?id=49> (last visited Mar. 3, 2016).

²⁶ U.S. Department of Education, National Center for Education Statistics, *Table 228.70*, INSTITUTE OF EDUCATION SCIENCE, http://nces.ed.gov/programs/digest/d14/tables/dt14_228.70.asp (last visited Mar. 3, 2016).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² As of 2013, Salt Lake City boasts a population of 191,180 persons. See Laurretta Brown, *Student Attacks on Teachers Up 34.5%; Record 209,800 in 2011–12 School Year*, CNS NEWS (June 10, 2014, 4:00 PM), <http://www.cnsnews.com/news/article/laurretta-brown/student-attacks-teachers-345-record-209800-2011-12-school-year>.

³³ U.S. Department of Education, National Center for Education Statistics, *supra* note 26.

12,400 took place in a private school.³⁴ While this numerical disparity can be largely explained by the fact that there are far more public school teachers than private, the problem of student-on-teacher violence is still significantly worse in public schools than it is in private schools.³⁵ Based on percentages, about 5.8% of all public school teachers were attacked that year, whereas only 2.7% of private school teachers were attacked.³⁶ In other words, a public school teacher is more than twice as likely to be physically assaulted by a student than a private school teacher. Thus, the degree and pervasiveness of the problem of student-on-teacher violence varies from institution to institution, and is significantly worse in the public school system.

Another consideration in understanding the silent national crisis is the number of reported *threats* of physical violence made against teachers. Abuse comes in many forms, only one of which is physical. In the last decade, roughly seven to twelve percent of teachers nationwide were threatened with physical violence by their students.³⁷ This percentage has, over the years, fluctuated between the high single digits and the mid-teens, but it is always (unsurprisingly) significantly higher than the number of physical assaults.³⁸ Student threats are intrinsically linked to the problem of student-on-teacher violence and so must be considered in a discussion of the problem, as words frequently translate into action.

One final consideration should color an understanding of this problem: many have suggested that incidents of student-on-teacher violence are woefully underreported.³⁹ For a number of reasons, schools are incentivized not to report incidents of student misconduct and, indeed, frequently do not. For example, in 2012, the Bibb County public school system in Georgia *voluntarily* reduced its use of evidentiary hearings that lead to expulsions, from 772 in the 2010–2011 school year, to

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Scottie Hughes, *Why is Violence Against Teachers Being Covered Up?*, TOWNHALL.COM (Oct. 7, 2013 12:01 AM), <http://townhall.com/columnists/scottiehughes/2013/10/07/why-is-violence-against-teachers-being-covered-up-n1718394>; Cheryl A. Vital et al., *Laus and Responsible Practices to Address Physical Assault Against Teachers*, 276 ED. LAW REP. 553, 553–54 (2012).

only 116 in the 2011–2012 school year.⁴⁰ Unsurprisingly, expulsions (which are a product of these evidentiary hearings) declined from 223 to 28 during this period.⁴¹ This is a precipitous drop. Within the course of a single year, expulsions dropped 125% in Bibb County schools. While the county claimed the drop demonstrates the “progress” its schools are making in curbing student delinquency, these numbers are quite clearly fabricated.⁴² It is highly doubtful the students are becoming better behaved; it is eminently more likely that the school is simply turning a blind eye to the problem of juvenile delinquency. Bibb County’s voluntary decision to refrain from seeking punishment for students who have committed serious offenses is illustrative of a much larger trend. Schools nationwide are downplaying or ignoring entirely acts of student misbehavior, acts of violence included. Student-on-teacher violence, therefore, is very likely a much larger problem than the numbers and statistics reveal.

III. VARIOUS STATES’ ATTEMPTS AT FIXING THE PROBLEM

These studies, naturally, raise the following question: what are states doing to prevent or correct this nationwide epidemic? In general, states have taken one of three approaches (or some combination thereof). The most common solution is what I will call “sentence enhancers,” a legislative solution intended to deter students from attacking their teachers. Next, some states have adopted mandatory expulsion schemes that operate to automatically remove student-assailants from public school systems. Lastly, select teachers associations and unions have entered the fray to seek court intervention and protection where legislative efforts fail. While all are a step in the right direction, none of these solutions—alone or in the aggregate—is enough to fix the problem of student-on-teacher violence. The fundamental failing of these solutions is that they are all reactionary in nature. What is needed, and what will shortly be proposed, is a prophylactic solution.

⁴⁰ Hughes, *supra* note 39.

⁴¹ *Id.*

⁴² *Id.*

A. *Sentence Enhancers*

Generally, sentence enhancers are statutory provisions that operate to enhance the usual punishment when the assailant specifically targets a teacher or other school personnel (e.g., a misdemeanor becomes a felony). Indeed, such statutory provisions are firmly in place in the majority of states. In California, assault against a teacher is punishable by jail time of up to one year, whereas a normal assault “is punishable by . . . imprisonment in the county jail not exceeding six months.”⁴³ The statutory penalty, therefore, is potentially double what it otherwise would be. In Arizona, if the aggressor “know[s] or ha[s] reason to know that the victim is” a teacher, the assault is considered aggravated and becomes a Class 6 felony, whereas normal assault is only a Class 1 misdemeanor.⁴⁴ In Virginia, assaulting a teacher results in a *mandatory* prison sentence of at least fifteen days in jail.⁴⁵ In Ohio, assaulting a teacher escalates what would have been a first-degree misdemeanor to a fifth-degree felony.⁴⁶ In Utah, assault that would otherwise be a Class B misdemeanor is escalated to a Class A misdemeanor if the individual “assaults an employee of a public or private school, with knowledge that the individual is [a school] employee.”⁴⁷ As in California, in Utah, the escalation potentially doubles the statutory punishment: a Class A misdemeanor is punishable by prison time of up to one year in jail, a \$2,500 fine, or both, whereas a Class B misdemeanor is punishable by prison time of up to six months in jail, a fine of up to \$1,000, or both.⁴⁸

Texas, however, has the most aggressive sentence enhancement scheme. In Texas, an assault that would normally be labeled a Class A misdemeanor is escalated to a third-degree felony if committed against “a person the actor knows is a public servant while the public servant is lawfully discharging an official duty.”⁴⁹ Since teachers are statutorily recognized as public servants, the statute is controlling. The

⁴³ CAL. PENAL CODE § 241.4 (2011); CAL. PENAL CODE § 241(a) (2012).

⁴⁴ ARIZ. REV. STAT. ANN. § 13-1204(A)(8)(d) (2011).

⁴⁵ VA. CODE ANN. § 18.2-57(D) (2014).

⁴⁶ OHIO REV. CODE ANN. § 2903.13(C)(4)(d) (2013).

⁴⁷ UTAH CODE ANN. § 76-5-102.3 (2015).

⁴⁸ UTAH CODE ANN. §§ 76-3-204, 76-3-301(1)(c)-(d) (2015).

⁴⁹ TEX. PENAL CODE ANN. § 22.01(b)(1) (2013).

punishment is severe: whereas a Class A misdemeanor is punishable in Texas by no more than one year in jail, a \$4,000 fine, or both, a third-degree felony is punishable by imprisonment of two to ten years, a fine of \$10,000, or both.⁵⁰ This is quite the “enhancement.” The lesson is simple: don’t mess with teachers in Texas!

Because sentence enhancers merely establish a system of enhanced punishment, they are not an effective remedy to the problem of student-on-teacher violence. Sentence enhancers operate only to more aggressively punish the offender, rather than preventing the offender from offending in the first instance. In sum, what is needed are prophylactic measures, policies and procedures that seek to *prevent* the harm from occurring, not reactionary measures that attempt to obtain retribution once the harm has already occurred. Admittedly, enhanced punishment, in many cases, *can* serve as a deterrent. But here the situation is different, as few—if any—juveniles are aware of state penal codes and their dispositive provisions. Because most high school and elementary aged children are unaware of such enhancements, the enhanced punishments do not deter them. Thus, sentence enhancers are deficient in remedying the problem of student-on-teacher violence.

B. *Expulsion*

Some states and school districts have simply passed laws or adopted policies that operate to automatically expel student-assailants from the public school system. For example, Texas has taken this approach. Section 37.006 of the Texas Education Code provides, “A student *shall* be removed from class and placed in a disciplinary alternative education program [if the student] . . . engages in conduct that contains the elements of the offense of assault.”⁵¹ Michigan has also adopted a similar approach. The Revised School Code of Michigan Section 380.1311a(1) states that school districts are under an obligation to expel pupils in the sixth grade level or higher if they commit “a physical assault at school against a person employed by . . . the school”⁵² Section 380.1311a(3), however, allows the school district, “in its discretion,” to place

⁵⁰ TEX. PENAL CODE ANN. §§ 12.21, 12.34 (2011).

⁵¹ TEX. EDUC. CODE ANN. § 37.006(a)(2)(B) (2011) (emphasis added).

⁵² MICH. COMP. LAWS ANN. § 380.1311a (2007).

the child in an alternative education program, provided “that those . . . [students] are physically separated at all times during the school day from the general pupil population.”⁵³ States like Michigan and Texas have adopted a *mandatory, zero-tolerance* expulsion policy for students who commit acts of violence against teachers. This is a step in the right direction. Such a scheme, while not prophylactic in nature, is perhaps the next best thing. Under such a regime, violent students are ferreted out of public school systems with the net result being safer schools and less incidents of violence.

However, relatively few states have adopted a *mandatory* expulsion scheme for incidents of student-on-teacher assault. Rather, expulsion in such jurisdictions is *discretionary*, subject to the determination of school administrators. To name just one example, the Connecticut Code provides that “local or regional board[s] of education . . . *may* expel . . . any pupil whose conduct on school grounds . . . endangers persons or property.”⁵⁴ While expulsion remains an effective means of cleansing public schools of violent students, it is wholly ineffective when left to the discretion of school administrators. The discretionary system is problematic because school administrative personnel frequently elect to retain the student-assailant.⁵⁵ Indeed, it has been suggested that there is a financial incentive to retain students, violent or otherwise.⁵⁶ While the formulas for determining the funding of public schools are complex and vary from state to state, one common thread among all school districts nationwide is that school funding is based largely on average daily attendance.⁵⁷ Given the very real need for government dollars, many school administrators elect only temporary suspension or lesser punishment for student aggressors, resulting in less safe schools. Thus, to be effective, expulsion schemes must be automatic and mandatory and discretionary schemes should be avoided. Unfortunately, as stated above, relatively few states have opted for mandatory schemes.

⁵³ *Id.*

⁵⁴ CONN. GEN. STAT. ANN. § 10-233d (2014) (emphasis added).

⁵⁵ See Hughes, *supra* note 39.

⁵⁶ Noel M. Johnston, *The Chicago Public Schools and Its Violent Students: How Can the Law Protect Teachers?*, 48 DEPAUL L. REV. 907, 930 (1999).

⁵⁷ *Id.*

C. *Teachers' Associations*

Where legislative protections have fallen short, teachers' unions have banded together to tackle the problem of student-on-teacher violence. For example, in Wisconsin, a powerful teachers' union, Madison Teachers Inc. ("MTI"), has taken up the task of protecting teachers from student aggression. MTI describes itself as "a member driven Union consisting of over 4,500 members in five Bargaining Units" that has, on a number of occasions, instituted civil actions against students who attack or threaten their teachers.⁵⁸

Most commonly, an MTI attorney will petition the court for a restraining order, requesting that the student be prohibited from entering the teacher's place of employment (the school).⁵⁹ While temporary (or emergency) restraining orders are fairly easily obtained, a permanent injunction is only issued after a hearing in which the student has an opportunity to defend him or herself.⁶⁰ MTI has provided legal services to teachers threatened and assaulted for nearly twenty years; it handles about a dozen cases a year and, according to MTI Executive Director John Matthews, the program has been "very successful."⁶¹ For example, at least in a handful of cases, MTI succeeded in obtaining a restraining order against student aggressors. MTI obtained a restraining order against two students who threatened their teachers by saying, "What if I gun you down?" and "I'm going to burn your house down and come to your funeral."⁶² MTI has also prevailed in cases of actual physical assault against teachers.⁶³

While restraining orders may offer an effective means of correcting (and perhaps even *preventing*) student-on-teacher violence, this approach is not without significant drawbacks. To start, permanent restraining orders against students are rarely granted.⁶⁴ Courts are reluctant to enjoin students from entering

⁵⁸ Madison Teachers Inc., *Welcome to Madison Teachers Inc.*, <http://www.madisonteachers.org/> (last visited Mar. 4, 2016); Simpson, *supra* note 13.

⁵⁹ Simpson, *supra* note 13.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Mike Ford, *The Impact of Disruptive Students in Wisconsin Public Schools*, WPRI (Apr. 2013), <http://www.wpri.org/WPRI/Reports/2013/The-Impact-of-Disruptive-Students-in-Wisconsin-Public-Schools.htm>.

public schools.⁶⁵ In addition, state courts are chronically overloaded and backlogged. As such, obtaining a restraining order may prove a lengthy ordeal. For these reasons, legal action against students seems to be the exception, not the norm.⁶⁶

IV. A PROPOSED SOLUTION: EDUCATING STUDENTS AND EDUCATORS ALIKE

While the aforementioned efforts to decrease student-on-teacher violence are well intentioned, they have not yet proven effective. In recent years, rates for this type of assault have remained largely unchanged. To remedy the situation we must understand what drives a student, who is in many instances smaller, weaker, and less experienced, to assault a teacher. In most circumstances, the physical realities of attacking a larger and older individual serves, almost instinctually, as a deterrent against such behavior. Indeed, the logic follows: if my opponent is larger and stronger than me, I will be hesitant to engage in a physical altercation. So why then are students attacking teachers at such an alarming rate?

I believe that students, all throughout the country, are emboldened by a false narrative: that is, students believe they are unqualifiedly immune from physical harm, no matter the circumstances. Indeed, with the demise of corporal punishment in many states, students feel they are shielded from the physical force of their teachers or other authority figures. In short, many students feel they are untouchable. Believing that their teachers' hands are tied by "the law," students likely believe they can instigate a scuffle without risking bodily injury to themselves.⁶⁷

Illustrating this point is a confrontation between a student and teacher in Hernando, Florida.⁶⁸ The altercation, captured

⁶⁵ *Id.* ("According to the Wisconsin Education Association Council (WEAC), restraining orders against students are rarely granted, and teachers are generally advised to do their best under difficult circumstances.").

⁶⁶ *Id.*

⁶⁷ I make no claim, however, that this perception is the *exclusive* cause of student-on-teacher violence. I humbly acknowledge that student violence manifests itself for a number of reasons, and I recognize that this theory explains only one of those reasons.

⁶⁸ George Wehby, *Teacher Punches Student—Justified Personal-Defense?* GUNS & AMMO (June 27, 2011), <http://www.gunsandammo.com/blogs/defend-thyself/teacher->

on video, shows a smaller female teacher guarding the classroom door, instructing her pupil (who is currently attempting to exit the classroom) to return to his seat.⁶⁹ The male student, who noticeably is taller than the teacher, takes a menacing step towards the teacher and pushes his chest against her body.⁷⁰ He then proceeds to place his face directly in front of hers and loudly screams vulgarities in her face.⁷¹ The teacher, visibly frightened, quickly throws two punches that connect with the student's body and face.⁷² In shock, the student stumbles backwards and away from his teacher. In the background a student onlooker exclaims, "Oh my God! He didn't do anything; you can't punch him in the face!"⁷³ It seems that, to both the student involved in the altercation as well as the exclaiming onlooker, the teacher's act of self-defense came as a complete surprise. Both seem perplexed that she would dare defend herself when threatened, and both appear to possess the same sense of self-righteous indignation. *How dare she! She can't do that!* Both students believed the false narrative described above. Perhaps if the student had not held so tightly to this false sense of security, he would not have taken that menacing step and the teacher's punches might not have been delivered. Admittedly, this is only speculation, but nevertheless there is a strong argument that shaping perceptions will help shape behavior.

Therefore, debunking this baseless perception will go a long way towards solving the problem of student-on-teacher violence. Both students and educators alike must be educated on teachers' common law privilege of self-defense, a privilege that does not simply evaporate upon entering school grounds. Put simply, students are less likely to be as bold or as brazen if they know that force can (and will) be matched with force.

V. EDUCATORS' COMMON LAW RIGHT TO SELF-DEFENSE

It is well documented in case law nationwide that educators have a common law right to defend themselves. In *Owens v.*

punches-student-justified-self-defense/.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Commonwealth, a Kentucky Court of Appeals reversed the conviction of a teacher, who was “adjudged guilty” of assault and battery of a student after the teacher used a pencil shaped “sneeze gun” to spray a student with a powdery substance (causing temporary eye irritation).⁷⁴ The court remanded the case for a new trial, instructing that—as to the proper legal standard for assessing an educator’s claim of self-defense—the trial court consider (1) whether the teacher had a reasonable apprehension of imminent bodily harm and (2) whether the spray was reasonably necessary in order to repel her attacker.⁷⁵

In *Landry v. Ascension Parish School Board*, a Louisiana Court of Appeals affirmed the lower court that reversed a local school board’s decision to terminate the employment of a teacher after he acted in self-defense.⁷⁶ In *Landry*, a high school teacher was attacked in the boys’ restroom by a student brandishing a two-by-four piece of wood.⁷⁷ The teacher managed to dodge most of the blows intended for him and fled the bathroom.⁷⁸ With the student in hot pursuit, the teacher ran to his car, obtained a pistol from the glove compartment, and, without pointing it at the student, made the pistol plainly visible to the student in an attempt to deter him.⁷⁹ Upon seeing the pistol, the student assailant relented.⁸⁰ Subsequently, the local police were summoned, whereupon the teacher surrendered the pistol and was “removed” from school grounds.⁸¹ The teacher was later charged and convicted of aggravated assault, but the Louisiana Supreme Court reversed the conviction, noting that the teacher’s conduct was fully justified under the doctrine of self-defense.⁸² This notwithstanding, the parish school board, by a vote of six to three, terminated the teacher’s employment without a statement or basis for its decision.⁸³ In the court action that followed, the Louisiana Court of Appeals found the termination “unreasonable and arbitrary” in that it was premised on “an

⁷⁴ 473 S.W.2d 827, 827–28 (Ky. 1971).

⁷⁵ *Id.* at 828–29.

⁷⁶ 415 So. 2d 473, 478 (La. Ct. App. 1982).

⁷⁷ *Id.* at 474.

⁷⁸ *Id.*

⁷⁹ *Id.* at 475.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 476.

isolated incident where [the] teacher, . . . defended himself in a reasonable manner when he was physically attacked by a student who was apparently determined to inflict [him] bodily harm”⁸⁴ Thus, the common law right of the teacher to self-defense was upheld in this instance.

In determining whether a teacher’s conduct is justified on grounds of self-defense, courts—as noted in both *Owens* and *Landry*—routinely apply the traditional common law analysis.⁸⁵ In its broadest sense, the doctrine of self-defense consists of two elements. First, the defendant must show an actual and reasonable apprehension of imminent danger and, second, that the force used was not excessive (i.e., the defendant used no more force than necessary to resist the attacker).⁸⁶

Even where the end result is unfavorable to the teacher-defendant (i.e., the teacher is convicted of assault and/or battery of a student), the legal standard—unsurprisingly—is the same. In *Parham v. Raleigh County Board of Education*, the Supreme Court of Appeals of West Virginia affirmed the county board’s decision to temporarily suspend a teacher for striking a student, concluding the teacher did not act in self-defense.⁸⁷ Applying the traditional common law analysis, the court noted that the teacher “did not appear to be threatened by or afraid of” the student.⁸⁸ Because the court found no evidence to support the first element of self-defense (i.e., a reasonable and actual belief of imminent danger), the teacher’s self-defense claim failed.⁸⁹ Thus, the case law establishes that a teacher’s privilege of self-defense is no different than a layperson’s. Courts have not judicially abrogated that privilege, nor have they held teachers to a more stringent standard.

If teachers find themselves in situations where they have an actual and reasonable apprehension of bodily harm, they are allowed to use force to neutralize the threat, provided the force is not excessive. The greatest obstacle preventing

⁸⁴ *Id.* at 478.

⁸⁵ Donald H. Henderson et al., *The Use of Force by Public School Teachers as a Defense Against Threatened Physical Harm*, 54 ED. LAW REP. 773, 774 (1989).

⁸⁶ *Id.* at 774.

⁸⁷ 453 S.E.2d 374, 378 (W. Va. 1994).

⁸⁸ In fact, the teacher had previously remarked that he struck the student “to keep him quiet . . . [and] ‘to acquire his attention.’” *Id.* at 376.

⁸⁹ *Id.*

teachers from asserting this common law privilege is the aforementioned societal perception that a teacher's right to self-defense is extinguished (or nonexistent) upon entering school grounds. Students (and probably many teachers) believe and perpetuate this narrative. In turn, this narrative emboldens and encourages students to attack their teachers. Therefore, I posit that incidents of student-on-teacher violence can be greatly reduced by debunking this perception. Students will think twice before attacking their teachers if they are assured of physical reprisal. The first step in tackling this problem is to educate educators and students alike on a teacher's common law privilege of self-defense. Only after teachers are assured this privilege exists will they use it. Only after students are assured it exists will they will be more reluctant to assault their teachers.

*Perris E. Nelson**

* This comment is dedicated to my parents, Lynn and Melody Nelson, who together have over 20 years of experience teaching in our public school systems.