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The "quip pro quo" game with students and offspring offers the opportunity to learn and teach practical legal concepts.

It's a Free Country

by Dr. Perry A. Zirkel
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Big lessons in law, applicable to our role as parents and as administrators or board members, sometimes arrive in small or strange packages. These packages may take the form of "comebacks" in the continuing game of one-upmanship in families and in schools. What is your parry, for example, when your "wise guy" son/daughter or student hits you with one of the one liners listed below?

It's a Free Country

The full remark, replete with a smirk, is something like "It's a free country; I can say whatever I like." When my son first reached this stage of uppitiness, I put him back down softly but surely with the explanation that the First Amendment and the other individual rights under the Constitution to which he was apparently referring apply only against the government. Our home is not covered by the Constitution, and the head of our family government is not my son (although perhaps it is my wife). Case closed.

When my students at Lehigh University make a similar comment, albeit with more polysyllables and politeness, I more profusely and obtusely explain that the Bill of Rights apply directly to the federal government and, by the doctrine of selective incorporation, to the state government, but not at all to private universities except for the rare exception that exhibits "state action." The underlying message is the same; the invocation of "free speech" is unavailing.

When students at a public school invoke the First Amendment, even they are not free from my speech. No constitutional right is absolute; it must be balanced against the fundamental rights of others. As the Supreme Court decided in *Tinker* (1969), students' freedom of expression may be cut off where it causes substantial disruption. As the Supreme Court more recently decided in *Fraser* (1986), student speech is also subject to the values inculcation function of school authorities acting *in loco parentis*. Even in the area left undisturbed by *Tinker* and *Fraser*, the courts have consistently held that school authorities may issue and enforce reasonable regulations concerning the time, place, and manner of student expression.

Don't Touch Me

The setting is more likely the public school, and the full text is more like "Don't touch me; I'll sue you for all you're worth." Aside from the limited financial worth of most adults associated with education and their official immunity in several states, the comeback here is to explain that the courts have generally rejected constitutional chal-

lenges to corporal punishment in the public schools and that the common law consistently allows school officials, like parents, to use reasonable force for disciplinary purposes. Even the clear minority of states that by legislation or regulation prohibit corporal punishment allow certain exceptions, such as using of reasonable force to quell a disturbance or to exercise self-defense.

It Was an Accident

This statement is more frequently heard at home. The full text is something like, with the hands facing up and the head facing down, "It was an accident; I didn't mean to do it." Picture this scenario, for example. Your daughter or son is eating an ear of corn with hands dripping in butter or margarine when "Miami Vice" comes on television in the background. Hearing the drum beat of the theme, your child grabs a tall glass of milk and heads off to the den. A moment later you hear, "Oops" and the sound of a splash. You go into the den to find the contents of the glass soaking into the new couch and carpet. Now comes the all-purpose excuse, "It was an accident." This is the place to enter the explanation that in addition to the intentional torts, the law recognizes something called "negligence" which requires compensation for reasonably avoidable accidents. Follow with the reminder that if s/he had heeded your oft-repeated admonitions about washing hands or about eating more carefully or about not taking food into the den, the accident could have been reasonably avoided. End quickly with the disciplinary consequences, before s/he realizes and points out the difference between compensation and punishment.

I'll Sue You for Libel

If you regrettably reach the level of having heated words with your students or offspring, they may resort to the retort "You can't call me that; I'll sue you for libel." Within the home context, where such name calling and suit threatening are hopefully rare, you could explain the difference between "libel" (written) and "slander" (spoken) and that, in any event, courts are unlikely to interfere with such intra-family matters. In the school context, you could add that courts generally accord a qualified immunity to school officials in slander and libel cases that arise within the scope of their employment. The plaintiff must show not only harm to reputation and dissemination to at least one third party, elements which are not necessarily present in the incident at issue, but also that the school official made the offending statement with "malice." Good faith errors are protected, as are truth and opinion.

Conclusion

The "quip pro quo" game with students and offspring offers school officials the opportunity to learn and teach lessons in the law. Putting down is sometimes better than putting up, at least in relation to inaccurate invocations of legal legerdemain. But use judicious restraint; "overdue," not "overdo," is the guiding watchword. Alternatively, show your students or children this article, and tell them to thank their lucky stars that you are not a parent- or teacher-lawyer like me.

*An excerpted version of this article appeared in *Executive Educator*, May 1987, v. 9, p. 8.

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