

Daily Journal

www.dailyjournal.com

MONDAY, SEPTEMBER 29, 2014

PERSPECTIVE

American jurisprudence is wrong about spanking

By Lauren Kelly Johnson

When a wife misbehaves, her husband bends her over his knee, makes her say she is sorry and smacks her with an open hand across her bottom. The husband keeps spanking while the wife cries and pleads for him to stop. The husband is angry and tells the wife he has to spank her to teach her to behave. The wife never knows how many times she will be spanked because the husband decides how much punishment she deserves. The wife knows the husband has more power in the relationship and wants to please him because she loves him dearly. The wife believes she deserves to be hit.

When a child misbehaves, the parent bends her over his knee, makes her say she is sorry and smacks her with his open hand across her bottom. The parent keeps spanking while the child cries and pleads for him to stop. The parent is angry and tells the child he has to spank her to teach her to behave. The child never knows how many times she will be spanked because the parent decides how much punishment she deserves. The child knows the parent has more power in the relationship and wants to please him because she loves him dearly. The child believes she deserves to be hit.

On Sept. 11, Adrian Peterson, a professional football player and father of six, was indicted by a Texas grand jury on charges of reckless or negligent injury to a child for allegedly using a tree branch to repeatedly beat his 4-year-old son on his back, buttocks, genitals, ankles and legs. The world saw photos of the child's slash-like wounds. Another son of Peterson's died last year, at age 2, from injuries sustained during an assault by the child's mother's boyfriend.

Peterson's indictment came on the tail of another high-profile criminal case involving another NFL player who was seen on video knocking his fiancé unconscious with his fist in an elevator. A public outcry led to the termination of his employment and to a public discussion about domestic violence. There appeared little dispute that the conduct was an extreme example of a serious domestic violence problem in society.

One might have expected a similar reaction to Peterson's case, but it received far less of an outcry. On the contrary, many came to Peterson's defense. Every defense of corporal punishment was explored in the popular media: its efficacy, its being a tool of "last resort," its need in a society filled with soon-to-be criminals, as well as justifications, such as cultural relativism on account of race or region. Even Peterson's mother came out to defend her son stating, "When you whip those you love, it's not about abuse, but love."

This case is also an extreme example of a serious domestic violence problem in our society. Child abuse is a form of domestic violence. While "domestic discipline," as previously described, is no longer prevalent in the United States, corporal punishment of children remains popular. In fact, the law permits spanking. While we cannot lawfully hit our partners, our friends, or even our enemies, the law allows adults to hit children. Nineteen states allow corporal punishment in schools, and all 50 states allow parents to use "reasonable" physical punishment.

California Penal Code Section 11165.4 defines "unlawful corporal punishment or injury" as a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. Peterson's conduct would have fallen within the purview of this section. Peterson's conduct also would have violated Welfare and Institutions Code Section 300(a) ("The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian") and probably 300(b), the "catch all" neglect statute.

But had Peterson only spanked his child, he probably would not have faced any consequence. The U.S. is a signatory to the United Nations 1989 Convention on the Rights of the Child's binding international law abolishing corporal punishment. However, the U.S., Somalia and South Sudan have not ratified the convention. And this year, the 6th District Court of Appeal held that a hearing officer erred when

a mother who spanked her 12-year-old daughter with a spoon, hard enough to leave bruises, failed to consider the parent's right to impose "reasonable discipline" under these facts. See *Gonzalez v. Santa Clara County Department of Social Services*, 223 Cal. App. 4th 72 (2014). I even recently sat across the table from a child welfare social worker who told my client he could legally spank his toddler.

Having practiced criminal defense and juvenile dependency law in California for much of 10 years, I have encountered many cases of corporal punishment that led to criminal charges or intervention from Child Protective Services and the juvenile court. My experience has led me to see the debate is poorly framed in the popular discourse.

The best question is not "Was Adrian Peterson's 'discipline' abuse or a reasonable parenting method?" There is little debate about whether whipping a child until he bleeds is an appropriate form of discipline. The better question is, "Why is corporal punishment still legal in all 50 states and is that in the best interest of children?"

We need not ponder the sentence of a child like an 18th century philosopher wondered about nonhuman animals, because we were all once children. Most of us, somewhere between 60 and 80 percent, have been spanked. Many of us can recall when our parent, who had more power than we could ever imagine, acted as judge, jury and executioner over our case, some with more justice or mercy than others. We have grappled with cognitive dissonance because those we had to trust to survive caused us to live in fear. Many of us learned through spanking that might makes right, that love is conditional, and that it is better to not challenge authority even when it is abused. We claim we turned out "OK."

Despite our beliefs, the behavioral science is persuasive. The American Academy of Child and Adolescent Psychiatry says that corporal punishment is associated with increased aggression and decreased internalization of appropriate behavior. Harsh physical punishment is associated with increased risk of mental illness and alcohol or drug abuse. One study showed that chil-

dren who were spanked at least once a month for more than three years had less gray matter in certain areas of the cerebral cortex. Ironically, the cerebral cortex is the part of the brain that regulates self-control.

As a parent's lawyer, I have never met a client who wanted to spank their child. Parents come to me in crisis seeking ways to connect and communicate better. Their children are screaming, "Please don't hit me again, mommy!" in public places. Parents are sending their children to school bruised so badly they cannot sit in their desks and with handprints and belt loop-shaped bruises about their bodies. They have teenagers who hit them back. Some kids have become seriously injured trying to get away. My clients feel disempowered and helpless as parents. Like many other family and criminal clients, these parents have interpersonal problems, unaddressed traumatic histories, and are seeking guidance.

I do not advise my clients to spank their children as discipline. Similarly, I do not advise my clients to drink and drive even if they may legally drive with a blood alcohol concentration below .08 percent and if they believe they are not under the influence. The line is too fine and the risks outweigh the perceived benefits. I do not want them to be exposed to criminal or civil liability.

Developmentally appropriate, non-violent parenting methods exist, can be taught, and are effective. When posed with the question, "If you could better connect with your child, raise a child who listens to you and is mostly compliant with your reasonable requests, empower yourself as a parent, and keep yourself out of the justice system, would you be willing to give up spanking?" I have yet to meet a parent who has said, "No."



Lauren Kelly Johnson is a criminal defender in Orange County. She can be reached at ljohnson@californiacriminaldefender.com.