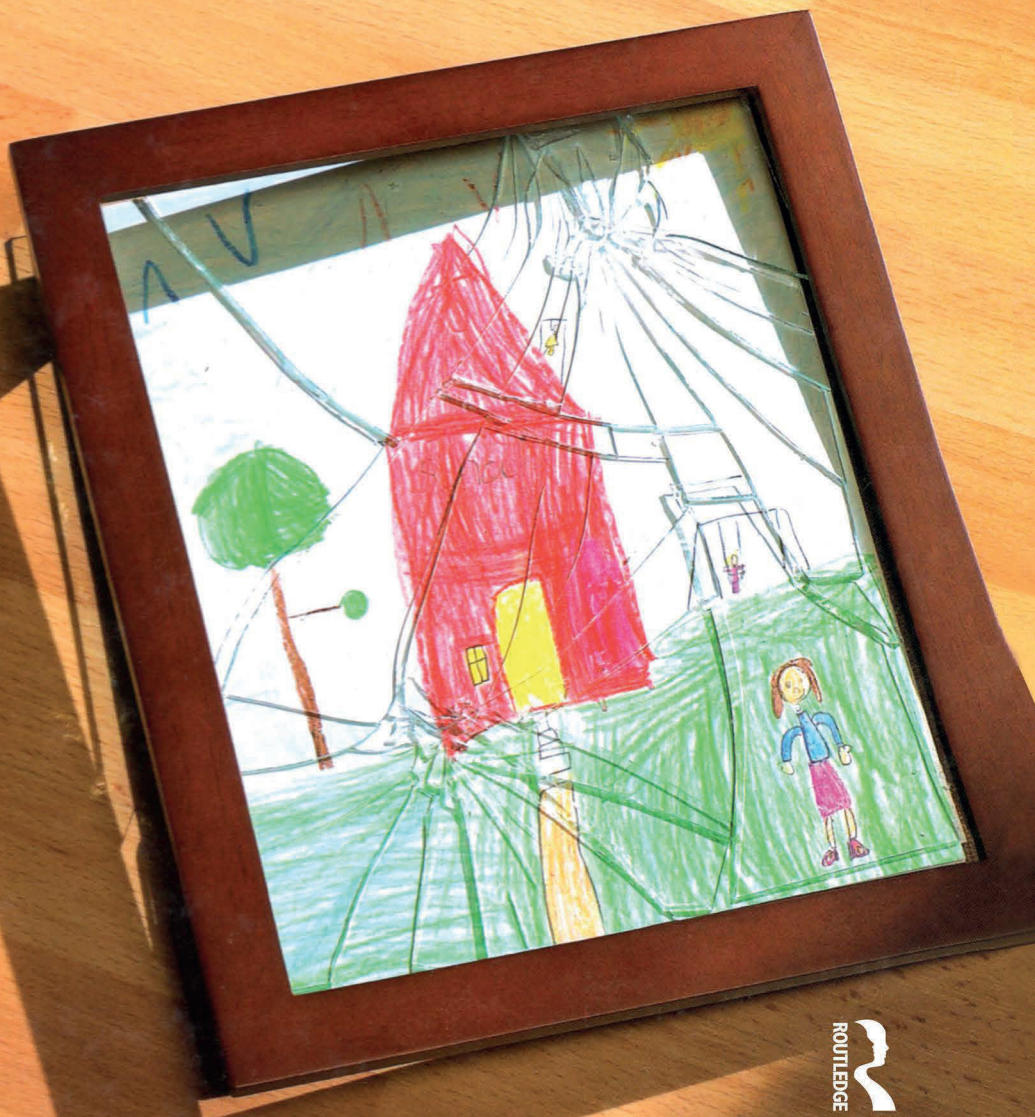


Violence In Today's School Workplace

Protecting Teachers and School Employees in a Violent Age



ROUTLEDGE

Dr. Diane H. Williamson
Child Psychologist

David E. Strecker
Labor Law Attorney

Henry Townsend, CSP
Safety & Health Consultant

Violence in Today's School Workplace:

Protecting Teachers and
School Employees in a Violent Age

*Your Guidebook for Coping with
Today's School Violence, and Understanding
Three of the Major Forces Involved
in this Nationwide Crisis*

Diane H. Williamson, Ed. D.
Child Psychologist

David E. Strecker, Attorney
Labor Law Attorney

Henry D. Townsend, C.S.P.
Safety and Health Consultant

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published 2007 by K & M Publishers, Inc.

2 Park Square, Milton Park, Abingdon, Oxfordshire OX14 4RN
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

First issued in hardback 2019

Copyright © 2007 Taylor & Francis

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Notice:

Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

ISBN 13: 978-0-9727134-6-7 (hbk)

Cover design by
Welch Design

Photography by
BW Studios

About The Authors

Dr. Diane H. Williamson earned her Bachelor's and Master's degrees from the University of Tulsa, and holds a Doctor of Education from Oklahoma State University. She completed postdoctoral training at the University of Oklahoma College of Medicine; Forest Institute of Psychology; the Menninger Clinic; New England Medical Center; and the Neurological Center in Dallas. Her major areas of professional training include human development and neuro-psychology. Her professional interests include human development and the effects of brain functions on learning and behavior. Dr. Williamson is a member of the American Psychological Association, and a board member of the Tulsa Chapter of the National Association for Mental Illness. Dr. Williamson has worked as a special education teacher and consultant for Tulsa Public Schools. She taught at the University of Wisconsin-Eau Claire and at Langston University in Tulsa. She also consults with hospitals and social service agencies in the Tulsa area.

Dr. Williamson is deeply committed to the challenge presented by today's disturbed youth – both in a pressure-packed school or domestic environment. Her involvement in – and resolution of – thousands of such cases qualifies her as an extraordinary author. She provides both a causal background as to the progression of these disturbed personalities, and what steps are necessary to prevent them, or at least be more alert to their danger signs.

David E. Strecker, J.D., M.I.L.R. is the 1995 founder and Managing Partner of Strecker & Associates, P.C., Tulsa, Oklahoma. Mr. Strecker has over 30 years experience in the litigation field. Strecker & Associates' exclusive practice in labor and employment law has given the firm wide recognition and praise in Oklahoma and neighboring states. It is known as one of the most sophisticated, substantial employment law practices in the entire region. He received his Law Degree (cum laude) and Masters of Industrial Labor Relations Degree from Cornell University. He holds a B.A. Degree (magna cum laude) from Westminster College in Missouri. David was a Lt. Colonel in the U.S. Army Judge Advocate General's Corps.

He teaches Labor Relations at Oklahoma State University. He is a member of the Oklahoma and New York State Bar, as well as the U.S. Supreme Court. He is admitted to practice before several federal courts in Oklahoma, Arkansas, New York and Texas. David is former General

Counsel and Vice President of the Tulsa Area Human Resource Association. He brings a wealth of hands-on experience in the many legal matters surrounding the escalation of violence and the related litigation in our schools. He is well suited to add his expertise in legal and labor relations litigation to this book.

Henry D. Townsend, C.S.P. is President of *LosStop Consultant's, Inc.*, Tulsa, Oklahoma, specialists in Loss Control and Environmental Compliance. Henry has over 36 years of experience in the development, implementation and administration of Safety, Health and Environmental Compliance Programs. This includes work in the relatively unrecognized area of Bloodborne Protection requirements for people not employed in the medical care industry. A graduate of the University of Miami in Coral Gables, with a Bachelor of Business Administration degree, he also served in Merchant Marine Safety in the U.S. Coast Guard.

His global and domestic employment both as a corporate safety director and a consultant includes the U.S. Government, college instructor, petrochemical and medical electronics manufacturing, petroleum industry/manufacturing, heavy metal fabrication plants, and food processing sites. Mr. Townsend is a Professional Member of the American Society of Safety Engineers (ASSE) and a full member of the American Industrial Hygiene Association (AIHA), as well as being a Certified Safety Professional for 16 years. He currently serves as Chairperson of the Tulsa County Local Emergency Planning Committee.

Acknowledgments

The Authors and the Publisher wish to acknowledge and thank those who contributed to the writing of this book – those who encouraged our writing, typed our manuscript, read our material, and continually reminded us that such a book is very much needed.

Further we are indebted to the many state, local and federal agencies that so generously allowed us to research their material and include some of it in this book.

It is our hope this team effort will result in attaining the goal for writing this book: A Call To Action! A change agent that shows school workplace employees – from classroom teacher to school bus driver to the cafeteria worker – that violence against you (and between students) *is not* the norm. That there is absolutely no justification for anyone to be abused or violated by anyone else. That there is help available to all injured parties.

But even more important, is that there are means of stopping this vicious, endless cycle of increasing school violence. We offer you our support, our insight, and we wish you every success establishing your own school non-violence programs.

Good Luck!

Diane H. Williamson, Ed.D., Child Psychologist

David E. Strecker, Labor Law Attorney

Henry D. Townsend, C.S.P., Safety/Health Consultant

By Way of ... Introduction

This book is the unique, proactive viewpoint of three professionals who are gravely concerned about the devastating, deep wound effects of violence and bloodshed in our modern school workplace.

These highly skilled practioners, each from their field of expertise, pour into this book their combined decades of hands-on experience in three main forces involved in this disruptive trauma our dedicated educators and staff must grapple with daily. *Isn't their focus supposed to be just to educate, mature, and enlighten our children?*

But now, three overarching, non-education concerns have crashed the school house and shoved education aside:

- 1. The legal rights, concerns and recourse for all parties involved with violence;***
- 2. Aberrant student behavior and how to manage it; and***
- 3. Health-Safety protection.***

This team-writing approach to this festering problem eliminates your need to research data in the three professions comprising this book and areas of school violence. Instead, these distinguished authors piece together a string of proactive logic and solutions to this perplexing issue our educators and staff face. An honest effort has been made to provide a useful collection of references and resources for the proactive amongst you who want to research, explore and take action now to slay this growing monster.

Of course, no single source can provide an easy, comprehensive solution to the open-ended problems making up this boiling cauldron. You are strongly advised to talk with school administration and/or your attorney before finalizing any solutions to resolve this challenge.

We are confident this book breaks new ground, giving every one of you confidence and motivation, and opening many eyes to this complex set of issues our school workers live with. This is not a cookbook containing ready, easy solutions. It is more to let you know that, while yes, there is a problem, you are not facing it alone – there are sources of support and justice.

Let there be no doubt – these veterans from three diverse fields have worked hard to make this book flow logically and be useful. We welcome you to their writings.

The Publisher

Table of Contents

About the Authors	v
Acknowledgments	vii
Introduction	viii

Part I. A LEGAL PREFACE

David E. Strecker, Labor and Employment Law Attorney

1. INTRODUCTION TO THE LAW AND LEGAL TERMS	3
The Structure of the Law: The Nature of Law and Its Sources	
2. THE LAW PERTAINING TO SCHOOL VIOLENCE AND ITS PREVENTION	13
The Duty to Protect Against Violence: "In the Good Old Days"	
3. LEGAL TOOLS TO PROTECT OTHERS AND OURSELVES FROM VIOLENT ACTS	29
– Limits on Student Discipline and Self-Defense	
– Status of Corporal Punishment in the Fifty States as of July 2006.	50

Part II. THE ROLE OF CHILD DEVELOPMENT, BEHAVIOR AND LEARNING IN THE PREVENTION OF SCHOOL VIOLENCE

Dr. Diane H. Williamson, Ed.D., Child Psychologist

4. DEVELOPMENT PRINCIPLES: INFANCY, EARLY CHILDHOOD, AND ADOLESCENCE	57
5. THE DEVELOPMENTAL STAGES	63
6. EFFECTIVE MANAGEMENT OF SCHOOL VIOLENCE PREVENTION	87
– Behavior Management	

Part III. BLOODBORNE PATHOGENS (BBP), AND RELATED SAFETY ISSUES

Henry Townsend, CSP, Safety & Health Consultant

7. DISEASES CONTRACTED FROM BBP AND REQUIRED PROACTIVE MEASURES	99
--	-----------

8. REGULATORY PROTECTION AGAINST BBP DISEASES FOR SCHOOL WORKPLACE EMPLOYEES	113
9. THE APPLICATION OF THE OSHA BBP STANDARD AND THE PUBLIC SCHOLASTIC WORKPLACE	139

APPENDICES

Appendix A – U.S. Department of Labor Directory of States with Approved Occupational Safety and Health Plans	161
Appendix B – Sample Workplace Violence Policy Statement (Sample Format)	166
Glossary of Terms	167

PART I

A Legal Preface

Oliver Wendell Holmes was a famous 19th Century lawyer, judge and legal scholar. He was ultimately appointed to the United States Supreme Court. But he did not live in an ivory tower. A veteran of the Civil War, he was wounded in combat and schooled in the hard realities of war. Long after that experience he summed-up the true nature of law.

He said: "The life of the law has not been logic: it has been experience." Holmes knew that the law was not some academic exercise, but developed in response to the needs of society and as a reaction of society to our experience (including our mistakes).

As you read this book you need to keep Holmes' statement in mind. No single book can make you a legal expert or even acquaint you with all the laws you need to know. What I will attempt to do here in Part I is give you a legal (and practical) framework to use when you think about, or encounter problems at your workplace whether in the classroom, on a school bus, in the corridor, or on the playground.

The best legal advice I can give you can be summed-up in a simple phrase: *Use your common sense and experience when making decisions.* As Justice Holmes implied, much of the law is based on common sense and experience - not the experience of lawyers or judges - but the experiences of the average person in our society.

So you should not feel intimidated when you hear or read about huge jury verdicts against school districts or school employees. These things will always be possible in our society. Sometimes the verdicts are mistakes, made by juries. More often, however, they involve school employees doing exactly the opposite of what common sense would have told them to do. They often involve school officials reacting to a situation out of anger or frustration. They sometimes involve a person taking action for personal reasons, rather than basing their actions on what would be best for the school and its students. Finally, they are occasionally due to a school employee who has not been properly trained in performing their duties.

If you read and remember the topics discussed in these Legal Issues chapters, it will give you added confidence to deal with difficult people and situations that you encounter at work. There is nothing magical or mysterious about the law. Fortunately, it is not like learning how to speak a foreign language or attempting to master a strange type of mathematics. The basics are easy to learn. Perhaps you know some of them already!

Chapter One

An Introduction to the Law and Legal Terms

THE STRUCTURE OF THE LAW

The Nature of Law and its Sources

There are some special laws governing schools and we will get to these shortly. Before we do, however, it is important to understand that, in the eyes of the law, a school, a school bus, a playground, an athletic field, or other school settings are usually subject to all of the laws and rules that apply to other institutions of our society.

A *Law* is a rule or set of rules that govern our behavior. There are usually penalties for violating a law - these are sometimes referred to as the "*Teeth of the Law.*" There are two basic places where we go to find laws: Statutes and Court Decisions.

Statutes are laws enacted by a legislative body. This could be the Congress of the United States or your own state legislature. This might also include the laws enacted by the governing body of a city or town, such as a city council. Instead of being called "*Statutes*" however, such laws are usually referred to as *Ordinances*.

Court Decisions. Laws can also be created by courts. This is known as *Common Law* or *Judge Made Law*. Sometimes courts create law when there is not statute covering the area. At other times, courts interpret vague or unclear provisions of statutes, and such interpretations become a part of the law. It is difficult to summarize Common Law, because one has to read many court cases to get the "Big Picture." One of the things this book will do is summarize the Common Law as it applies to the issue of violence in the school setting.

Constitutions are found at both the federal and state level. Constitutions are a type of statute because a legislative body of some sort usually creates them. Of course, we all learned in school how the U.S. Constitution came into being as the result of the efforts of our Founding Fathers. States also have constitutions usually created by the state legislature, special conventions, or territorial legislatures at about the time the state was admitted to the union. Constitutions are different from normal legislation in two respects.

First, they are usually more basic than legislation in that they deal with such issues as the fundamental rights of citizens, the structure of government, and the electoral process. Second, they are more difficult to amend or repeal than a normal statute. Usually, to amend a constitution it takes more than a majority vote of the legislature, or perhaps even a vote of the people (or the states).

In modern times, some laws create **Administrative Agencies** to enforce them. An example of this would be the *Equal Employment Opportunity Commission* created by Congress to enforce the Civil Rights Act of 1964. Some administrative agencies may be created by a state legislature to enforce laws it enacts. An example of this might be a state agency created to enforce a state's environmental laws.

The **Regulations** created by an administrative agency are not strictly law but often have the force of law. In other words, we

had better follow them unless we can show that the agency went beyond what it was supposed to do – that is, it exceeded the power given to it by the legislative body that created it. For our purposes, however, if your school district is governed by rules created by an agency, such rules should be followed. It is important to know that courts ordinarily will give great weight to an agency's rules and its interpretation of those rules.

Civil and Criminal Law

The law can also be looked at in at least two other ways. First is whether the law is Civil or Criminal. *Civil Law* pertains to rules which, if broken, the violators are "punished" by (1) monetary penalties often referred to as *Damages*, and (2) orders of a court to comply with the law in the future (these orders known as *Injunctions*). *Criminal Law* also lays down rules. If these rules are broken, however, the wrongdoer is subject to imprisonment as well as monetary penalties – often called *Fines*.

Some laws are both civil and criminal. A good example of this would be federal laws dealing with securities fraud. Someone who breaks these rules could be liable to be sued in civil court or prosecuted in criminal court (or both), depending on which rule or rules he or she broke.

Civil Law

Civil Law is usually enforced through lawsuits. These lawsuits are filed by individuals or companies (or organizations) against the person or company they claim violated their rights. Trials are often conducted in front of a jury who will make a decision once all the evidence has been presented to them. Sometimes a jury verdict does not have to be unanimous, depending upon the state involved and the size of the jury. The person bringing the lawsuit is known as

the *Plaintiff*. The person defending is the *Defendant*. The Plaintiff has the burden of proof. In other words, he or she must prove the case by a "*preponderance of the evidence*." This means that the Plaintiff must show their claims are more than likely true. If the evidence is evenly balanced, the Plaintiff loses because he or she has failed to carry the burden of proof.

Criminal Law

Criminal Law is enforced through law enforcement personnel (police, etc.) and through the district attorney, county prosecutor or similar official. Criminal trials are often conducted with a jury. The government has the burden of proof to prove guilt "*beyond a reasonable doubt*." The jury verdict must usually be unanimous. This burden of proof is much higher than the "*preponderance of evidence*" standard used in civil trials.

When Laws Conflict

We can also look at the law as a "pecking order". Because of the *Supremacy Clause* in the U.S. Constitution, federal law will always be at the top of the pecking order. In other words, if a federal law and a state law conflict, the federal law will control. For instance, some state laws say women are not allowed to work in certain occupations. Federal law, however, says women can work in *any* occupation. In this instance, federal law "trumps" state law. It works the same way if a state law and city ordinance conflict. The state law will always control.

Also, a constitution will always win over a statute or a court decision. You have probably heard of a court decision that holds a law to be "unconstitutional". This means the court decided that there was a conflict between the constitution and the law. If a law is in conflict with a constitution, the constitution always trumps (wins).

The Judicial System

Court systems differ widely from state to state. Some generalities hold true, however, in almost all states. One of these is that there is a “pecking order” in the judicial system. The ***Trial Court*** is the lowest court in the pecking order of courts. This is the court that conducts the jury trial whether it is civil or criminal. Some states have separate criminal courts, but most states provide for only one court system to try both civil and criminal cases at the Trial Court level.

Next is the ***Intermediate Appellate Court***, sometimes called the *Court of Appeals*. It hears cases that are appealed by the losing party at the Trial Court level. The party not liking the decision of this court may appeal it to the highest state court, usually called the ***State Supreme Court***. Further appeal is usually not available unless federal issues are raised allowing an appeal into the federal system.

Appellate courts do not usually hear witnesses or hold hearings where evidence is introduced. They decide cases on a “paper record” of what happened in the Trial Court, and on the basis of ***Briefs*** submitted by the parties. A *Brief* is a written argument as to why a party should win the appeal. Sometimes an Appellate Court will allow the parties to present an oral argument in front of the court, in addition to submitting Briefs.

In the federal system, the upward pecking order is as follows: ***United States District Court, Circuit Court of Appeals, and the United States Supreme Court***. A United States District Court will have jurisdiction over cases that arise in a geographical area known as the ***District***. An example would be the United States District Court for the Northern District of New York. Courts of Appeals are organized around a geographic area known as a ***Circuit***. The Circuit is usually

comprised of all the district courts in a group of several states. An example of this would be the United States Court of Appeals for the Tenth Circuit, which includes the district courts in the states of Utah, Oklahoma, Colorado, Kansas, New Mexico, Wyoming and Montana.

Some states have special appeals courts to hear particular kinds of cases. For instance, some states have an Appellate Court dealing only with criminal cases. Other states have a special court dealing with appeals in the Workers Compensation System.

The Fundamentals of Tort Law

A *Tort* is defined as *a wrong done to another person*. Beyond this, a Tort is *a wrong for which the law will provide a remedy*. A tort is a civil wrong, and not criminal in nature. Some torts may also be crimes. For instance, assault is both a civil wrong and a criminal violation in most states. Other torts, such as negligence, are usually civil only. Torts may be either *Intentional Torts* or *Negligence-based Torts*.

Intentional Torts

Intentional Torts include assault, battery, causing another person severe emotional distress, conversion (taking another's property), slander, libel or false imprisonment. The key element here is that the actor intends to commit the act in question. He or she may not intend the precise harm caused by the act, but nevertheless will be liable for all harm caused.

For instance: I become angry with a co-worker and hit him, thinking only to teach him a lesson for insulting me. My blow is harder than I thought it would be. His skull is fractured and he is disabled for life. Even though I did not intend to cause

such severe harm, I will be liable for the harm done because I did intend to commit the tort of battery.

An *Assault* is an act that puts another person in reasonable fear of bodily harm. If I come at you with a baseball bat and start to swing it, I have assaulted you. If I throw a stapler at you and miss, I still have committed an assault. *Battery* is an *unlawful act of physical touching*. A blow, a push, a shove, hitting someone with an object – are all considered batteries.

False Imprisonment consists of an unjustifiable confinement of another person, either literally (as in locking them in a room), or through threats of harm to them or to others (example: telling someone they cannot leave a room until they have confessed to a crime).

In some cases, the law allows us to do harm to another person. *Self-Defense* or *Defense of Another* are the two main examples of this. If you reasonably fear that someone is about to do harm to you or to another person, you are allowed to use whatever force is necessary to prevent the harm. In most states, deadly force may only be used – if necessary – in self-defense (or defense of another) to prevent death or serious bodily injury. In some states, if you can remove yourself from danger, you must attempt to do this before defending yourself. This is known as the *Duty to Retreat*. Other states do not recognize this principle, but only require that you reasonably perceive you are in danger of being harmed. In those states, you may defend yourself even if you could retreat.

Negligence

Before you can be sued for a tort based on negligence, there must be a *Duty* on your part either to act or refrain from acting. If you have no duty, then you cannot be liable. For instance: assume I am walking down the street and see two

strangers fighting each other. It appears one is gaining the advantage and is about to seriously injure the other. I do nothing and the person is seriously injured.

Am I liable because I should have done something to stop the violence? The answer? **No**. You may say that I had a moral obligation to stop the violence and you might be correct. But I had no *legal* obligation to break up the fight, because I had no duty under the law to do so.

If however, you do have a duty to another person, then you must act reasonably, and can be held liable for any harm done to that person caused by your negligence. "When does one person owe a duty to another?" A good example is a parent's duty to his or her child. Another example: a duty owed by those who operate public transportation (such as a bus driver) to their passengers. School personnel may also have a duty to protect students, and the school system may also owe a duty to its employees. We will discuss these important issues later in these chapters.

Negligence can consist of either taking action or a failure to act. If I drive my car at night without my lights on and have a wreck because no one can see me, I have committed a *Negligent Act*. I will be liable for any harm this act causes to others. If I am the driver of a bus and notice a passenger having what appears to be a heart attack and I do nothing, I have failed to act in a situation where I had a duty to act. Once again, this is considered to be negligence, and I may be liable to the passenger.

For me to be liable to pay damages, the negligence must be the *Proximate Cause* of the harm. In other words, my negligent act must have directly led to the damage. If I cause a car accident by running into the rear of another car, I am certainly liable for the damage to the other car, and to those injured in the crash. But if the driver of the car I hit is wanted by the police, and he runs away from the scene and is struck