



PennState
Dickinson Law

Penn State Dickinson Law
Dickinson Law IDEAS

Faculty Scholarly Works

Faculty Scholarship

Fall 2003

Out on a Limb: Doe v. State of Hawaii Department of Education (with apologies to Joyce Kilmer)

Robert E. Rains

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/fac-works>

Recommended Citation

Robert E. Rains, *Out on a Limb: Doe v. State of Hawaii Department of Education (with apologies to Joyce Kilmer)*, 82 *Or. L. Rev.* 933 (2003).

This Article is brought to you for free and open access by the Faculty Scholarship at Dickinson Law IDEAS. It has been accepted for inclusion in Faculty Scholarly Works by an authorized administrator of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Poem

ROBERT E. RAINS*

Out on a Limb: *Doe v. State of
Hawaii Department of Education*,¹
(with apologies to Joyce Kilmer)

We thought that we would never see
A student taped against a tree:

A kiddie from the second grade—
We hope that he was in the shade.

When little John got in a fight,
They tried to teach him wrong from right.

So to the principal he was sent
For tutelary punishment.

The principal said, “You must stand still
And have a time-out, or I will

Take you outside to yonder tree
And stick you there for all to see.”

John squirmed, but he could not escape,
And soon was bound with masking tape.

The principal did just as he'd said
And wrapped John up around the head.

* Prof. Rains (The Dickinson School of Law of the Pennsylvania State University) enjoys writing verse when he isn't all tied up.

¹ 334 F.3d 906 (9th Cir. 2003).

A fifth grade girl then came along
And told the grown-up it seemed wrong.

Although the principal must have pined,
He shortly had young John untwined.

* * *

John's parents thought it not a lark
To use their son as extra bark.

They sued the principal at once
Asserting he had been the dunce.

The principal claimed there's no clear rule
Against hog-tying kids at school.

The circuit court said, "Yes, there is;
One need not be a legal whiz

To know there's no immunity
To tape a student to a tree."²

² This case was brought as a civil rights action filed on behalf of the pseudonymous minor, "John Doe," against his school district and Vice Principal Keala, the perpetrator of the actions described. In district court, Keala moved for summary judgment, arguing, *inter alia*, that he was entitled to qualified immunity. The district court thought otherwise, and, for reasons at best obscure, Keala appealed to the Ninth Circuit. In a brief opinion, the Circuit axed his appeal, finding that John had properly alleged a violation of his Fourth Amendment right to be free from unreasonable seizure. The court opined that if the fifth grade girl who came along realized that taping John's head to a tree was inappropriate, there was sufficient evidence for a fact finder to conclude that the action was objectively unreasonable. The court also found a clearly established right of a student not to be thus restrained, at least for minor infractions, even in the absence (thank goodness) of a prior case directly on point.

This humble offering is, of course, a parody of Joyce Kilmer's ubiquitous poem, "Trees." "Trees" can be readily found on the Internet and in innumerable anthologies including, but (as we legal-types are fond of saying) not limited to: M.E. SPEARE, ed., *THE POCKET BOOK OF VERSE* (1940); TOM ATKINSON, ed., *POEMS TO BE READ ALOUD* (1983); and MARTIN GARDNER, ed., *BEST REMEMBERED POEMS* (1992). Michigan Appeals Judge J.H. Gillis famously parodied "Trees" in *Fisher v. Lowe*, 333 N.W.2d 67 (Mich. App. 1983). Two other parodies of "Trees" are collected in MARTIN GARDNER'S *FAVORITE POETIC PARODIES* 65-66 (2001).