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## BOOK REVIEWS

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## Book Reviews

THE FLEISCHMAN REPORT ON THE QUALITY, COST AND FINANCING OF ELEMENTARY AND SECONDARY EDUCATION IN NEW YORK STATE, VOLUME I. New York, New York: The Viking Press, 1973. \$15.00.

*Reviewed by Anthony M. Cresswell<sup>1</sup>*

In the May 1968 issue of *Atlantic*, Elizabeth Drew presented a sardonic and insightful review of the purposes of governmental commissions, "On Giving Oneself a Hotfoot: Government by Commission." Among the reasons she lists for appointing a commission are: to postpone action yet to be justified by insisting that you are at work on the problem, and to act as a lightning rod drawing political heat away from the White House (read Governor's Mansion). After reading Volume I of the report of the New York State Commission on the Cost, Quality, and Financing of Elementary and Secondary Education (hereafter known as the Report), I am tempted to add another purpose to the list: propagation of the faith. Certainly the Report fulfills some of the purposes noted by Ms. Drew, but many sections come across as a sermon on the conventional wisdom of school finance and school integration. That may be taken as harsh criticism of an academic work but hardly worth the raising of an eyebrow as a comment on a political document. While the work of the Commission may have been primarily political, the Report itself is presented in a hard cover, footnoted, academic style. It can be reviewed either way. The political review will have to be left to the New York Legislature. Here, the Report will be viewed as an attempt at a serious contribution to the analysis of school finance and other major policy questions.

That is where the disappointment arises. Some of the Report makes a good deal more sense as secular scripture than as a serious contribution to the state of policy analysis in the financing and organizing of public schools. Conventional wisdom is often raised to the level of revelation, rather than subjected to careful and critical scrutiny. Presumably, a Commission of this sort is to make policy recommendations. They are to be backed by policy analysis, that is, the systematic study of the interface between positive social science and the value judgements of public decision-making. If policy analysis is to be the foundation, then the Report's recommendations are on shaky ground indeed. Many of the most fundamental questions were not asked and therefore their answers could not inform the deliberations of the Commission. As a result, the data used to support the Commission's conclusions are based on some rather fragile assump-

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tions. Those questions and assumptions will be the main focus of attention here, but first it is useful to explore some of the framework of the Commission's work.

In late 1969 the big questions of how the school finance mess was to be settled were still very much up in the air. The California Supreme Court had not yet handed down its decision in *Serrano v. Priest*. Those who advocated school finance reform through the courts could still not know the eventual prospects for success. Commissions and legislative studies of school financing were springing up in a number of states, with a variety of political purposes and uncertain prospects for success. The President's Commission on School Finance has been proposed, but its eventual creation was somewhat in doubt due to a dispute between Nixon and the Congress. The time was indeed ripe for a major study of the specifics of the school finance reform. New York State was quick to move into the breach. A joint action of the Legislature, Governor, and Board of Regents created the Commission and named its blue ribbon members. So with an initial appropriation of about \$1 million (which eventually grew to over \$2 million) the Commission began to tool up for the major study of state school finance. The final Report, published in three volumes, reflects the ambitious plans of the Commission. Volume I, reviewed here, includes an overview of the school system and chapters on the finance system, racial integration, Federal aid, and aid to non-public schools. Volume II covers curricular issues and a discussion of children with special needs and social problems in the schools. The final volume concentrates on governance, policy issues, New York City as a special case, and a summary statement. In scope of coverage and total bulk, the Report is true to the high expectations with which the work was started.

From the beginning it was a high budget, high visibility, high prestige operation. The intense pressures involved in being in the limelight on such a hot policy issue may have in fact led to the basic mistakes made early in the design of the Commission's work. It is clear that the Commission decided it had to study everything. The resulting research agenda spread the resources over dozens of topics and diffused the effort. And although Volume I reports only a portion of the Commission's work, it is fairly clear that the flaws in the first document are not likely to be remedied in the later ones. So while the Commission was in a uniquely advantageous position to address fundamental questions, somehow they fell through the cracks.

What the Report fails to do can be expressed in terms of three questions which are fundamental to the school finance reform process, but which are either ignored or inadequately treated:

1. What are the connections among cost, quality, and equity in schooling?
2. How did the system get to be the way it is, and what are the prospects for success in changing it, given the causes of the current structure?
3. What will happen as a result of proposed finance changes to:
  - a. governance of the schools?
  - b. patterns of economic behavior resulting from tax and revenue changes?

It is difficult to conceive of a rationale for a major study of school finance and its reform which justifies these omissions. Certainly none is supplied in the Re-

port. And further speculation on that point is not likely to be particularly useful. So we turn instead to the omissions themselves.

The first on the list is clearly the most important. An equitable tax system requires a sound definition of what is an equitable way to gather resources from the tax payer. An equitable distribution system requires a sound description of what constitutes the desired allocations of benefits to the taxpaying household. Where dollars are to be allocated, some inkling of the relationship of dollars spent (costs) to benefits is crucial. The way the Report handles (or fails to handle) these problems sets the basis for answering subsequent questions. It turns out to be a rather weak basis—one of the many places where conventional wisdom is substituted for analysis. Since the treatment of these equity questions is crucial, it is worth examining in some detail.

The closest thing to an analysis of the problem of cost/quality equity relationships comes in Chapter 2. Scholars have been wrestling with the problem of cost/quality relationships for many years, producing a large volume of rather ambiguous findings. Scholars have wrestled with the meaning of equity and equality for hundreds of years. From Rousseau and Mill to the recent work of John Rawls, analysts have examined the problem of defining a just distribution of social and economic inequalities. The well-developed concept of justice presented by Rawls, for example, is based on two principles:

- (1) "Each person is to have equal right to the most extensive basic liberty compatible with a similar liberty for others."
- (2) "Social and economic inequalities are to be arranged so that they are both
  - (a) reasonably expected to be to everyone's advantage, and
  - (b) attached to positions and offices open to all."<sup>2</sup>

This approach draws a proper distinction between *equality* in basic liberties and the distribution of social and economic *inequalities*, the latter being the concept of equity of central importance to the financing of schools. When we look for evidence of how the work of these scholars informed the Commission, we search in vain. Nowhere is acknowledged the nature of the dilemmas in defining a just distribution of governmental services. Instead we find Chapter 2 opening with, "Equality is a difficult word to define," followed by citations from *Webster's Dictionary*. That scholarly discourse leads the Commission to beg the basic question of justice by jumping to a discussion of what constitutes financial equality in education finance. In the Commission's view, it seems, inability to define justice or equity in general is no handicap to constructing a specific definition for school finance. Perhaps not. But the resulting discussion is certainly handicapped by something. First, conventional wisdom provides a footing for assuming a cost/quality relationship. In the Commission's words:

"...experience tells us that the amount of money expended does make a meaningful difference in the quality of education. Notably, the current trend of judicial opinion to the effect that grossly unequal expenditures per pupil within a state violate the Federal Constitution is based on the assumption that educational expenditures and quality are related."

The Commission then goes on to conclude that equal spending for all is a neces-

<sup>2</sup> John Rawls. *A Theory of Justice*. Cambridge, Mass.: Belknap Press, 1971, p. 60.

sary first step to higher quality education. Ten pages later comes the recommendation that school districts get supplemental grants according to how many low achieving students they have. But that supplement is not necessarily to be spent on those low achievers, just so the whole district gets more. In short, all school districts get the same basic financing, except for add-on grants to districts with low test scores. To fund the system the Commission proposes a flat rate property tax on all districts for part of the revenue, the rest coming from state income and sales taxes.

The symmetry is pleasing. All school districts pay at the same rate for schooling, except for the rich ones, which pay somewhat more through the income tax. All school districts get the same to spend on schooling, except the low achieving ones, which get extra grants. It's common sense at its best, logical-sounding, straightforward, and seemingly equitable. But the rationale for this proposal is conventional wisdom masquerading as economic analysis. Efficient allocation of educational investment is judged, according to the Commission, on so-called efficiency criteria: "(1) the desire to maximize educational output, regardless of where it is located, and (2) the desire to account for spillover benefits which accrue to individuals or to communities other than the ones financing the education."<sup>3</sup> To begin with, these are not two separate criteria. Variables which account for spillovers are necessary parts of a function employed to determine an output maximum for education. But more importantly, neither is an efficiency criterion in the usual sense. A proper theoretical efficiency criterion for the allocation of public resources to schools should be the maximization of social benefit for given costs or expenditures. If greater benefits can be obtained by taking money away from schools, then efficiency demands such a policy. But conventional wisdom says we maximize benefits by funneling more money to schools, and so says the Report.

Moreover, it seems only reasonable to expect a proposal of supplemental funds to low achieving students to have some empirical rationale and some mechanism to target funds. But the Report cites no evidence for the assumed cost-quality relationship. We don't know that lack of funds produced low achievement but the Commission has faith that more money will work. They also have faith that districts will spend the funds on the low achievers, despite the substantial contrary evidence.<sup>4</sup> Among dozens of contracts funded by the Commission there was not a single cost-quality or cost-benefit study. Neither did it fund a study of the current uses of supplemental funds in the state. In fact, the empirical or analytical basis for their faith in the resource allocation scheme is largely nonexistent.

That is not to say that there is a lack of data presented describing the current allocation of funds and the effects of the proposed changes on dollar distributions. That sort of information is present to surfeit. But the data presented show nothing about the educational impact of the dollar redistributions. The supple-

<sup>3</sup> *Id.* at 91.

<sup>4</sup> Similar Federal grants under Title I (ESEA) have had little demonstrable effect and have often gone astray, despite Federal regulations. See Joel Berke and Michael Kirst, eds. *Federal Aid to Education*. Lexington, Mass.: D. C. Heath, 1973.

mental amounts for low achievers are chosen apparently right out of the air. But the question of just how much extra *should* be spent for low achievers is precisely at the center of a cost-quality-equity study. It is not sufficient to say in defense of the Commission that no definitive answer to these questions is available, or that one could not be developed in the period of the Commission's work. That may be true enough. But that is hardly reason to ignore the question. This should have been a high priority item. But it appears instead that the Commission chose to spread its efforts over a wide range of topics and slight the important ones. So we are left with a central proposal of the Commission resting on little more than a leap of faith.

There is, of course, another way to explain the derivation of any particular formula for supplemental educational grants. A group with a detailed knowledge of the political scene can determine roughly how much additional funds will be tolerated by the legislature, and what are the extremes of dollar redistribution possible within political constraints. Then probably with the aid of a computer, a trial-and-error search is undertaken for a formula which fits those political constraints. That is a time-honored practice, and not one I care to debate here. The point is simply that one does not need a blue-ribbon Commission and two years of study to perform that kind of analysis.

An examination of how dollars are distributed and how they affect educational services speaks to only half of the equity question. The other half concerns the equity in the system by which resources are collected by the state for the financing of the public school system. This question was not ignored by the Commission, but the answers it provides are faulty. In the words of Mill, "Equality of taxation, therefore, as a maxim of politics, means equality of sacrifice."<sup>5</sup> Unfortunately this maxim is not accepted by the Commission. Their research plan lacks investigation of tax incidence in New York State. And thus they propose taxes without knowledge (except of a most indirect nature) of what sacrifice is entailed or how that sacrifice impacts on different segments of the population. Their plan is a flat rate, state-wide property tax earmarked for schools and frozen at some arbitrary rate. They argue that this is a first step toward equity and that by freezing the rate, cost increases will force educational revenue raising to shift to more progressive state taxes, i.e., income taxes. But by the Commission's own figures this shift will be less than 3 per cent by 1980, and thus can do little to redress gross disparities in tax base among districts or the burden of high municipal taxes in the large cities of New York. According to ACIR figures, per capita non-school taxes in New York's large cities run about *twice* the amount of their surrounding suburbs.<sup>6</sup> A 3 per cent shift to non-property taxes is unlikely to have much of an effect on this disparity. Freezing may keep the situation from getting any worse, but that will hardly make it much better.

Another aspect of the equality of sacrifice involves inequities in assessment practices. The Commission recognizes the problem of wide variation in assess-

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<sup>5</sup> John Stuart Mill. *Principles of Political Economy*. New York: Reprints of Economic Classics, 1965, p. 804.

<sup>6</sup> Advisory Commission on Intergovernmental Relations. *State and Local Finances*. Washington, D.C.: U.S. Government Printing Office, 1969, p. 68.

ments and proposes remedies. But they are strictly technical in nature. They are apparently based on the assumption that assessments are unfair and vary among and within districts because of technical flaws in the procedures. That ignores the political component of assessment, and its immersion in local political affairs. To propose technical reforms alone begs the question of how to provide a system of controls or incentives to promote fairness as well as accuracy.

The political components of assessment reform are just a small piece of the question of the politics of finance reform in general. The system did not come to have its present characteristics by chance, but rather by virtue of the kind of decision processes involved in its creation. Those decision processes will surely shape any reforms. Yet the report proposing reforms ignores the decision process which produced the present system and will determine the handling of the proposals. Surely the Commission could not have ignored the political process of finance reform. There are some references to political constraints in the redistribution of school funds. But we miss any description of how the Commission reviewed and weighed these considerations. Perhaps that is too much to ask of a body which is itself political. But the omission of these topics leaves the Report with a surreal quality of political naivete which is somewhat disquieting.

Surely the chapter on federal funds to New York schools is an afterthought. Aside from calling for more aid from the Federal government, the chapter adds little. It makes the simplistic assumption that more federal funds will improve the fiscal situation in New York and that Federal R&D expenditures can have direct impact on the quality of schooling in the state. Propositions of this sort are risky to say the least and are best left out of a document already on shaky ground.

The treatment of racial integration in the schools is a good deal more sound in its reasoning and courageous in its tone than the one on finance. The commission properly recognizes the deteriorating situation of racial isolation in northern urban schools and fully accepts the public school's responsibility to act. The responses are comprehensive and, on the whole, reasonable propositions when viewed from the point of view of school administration. What is missing in the majority section of the Report is the feeling that there is an appreciation for the cloudiness of the situation. It is proper for a governmental Commission to gird itself with righteous indignation and go forth to right a wrong. It is improper for that Commission to lose sight of the real dilemmas involved in school integration. One involves the ability of the schools to achieve or maintain racial integration in the face of household mobility, especially among middle class whites. Another is the balancing of the real educational and social costs of integration against the expected gains. Except for a dissenting statement by one of the Commissioners, these concerns are essentially ignored.

The connection between racial isolation in the schools and housing is obvious and direct. As long as there are income inequalities and free choice of household location, segregation along racial or economic lines is possible. And as long as this is true there will be limits to the amount of integration possible through simply moving school children around. That is not to say the schools should do nothing. But school policy makers should realize and acknowledge the limits of

their intervention, and the need to address the problem of race relations in more ways than bussing. This point of view is found only in the words of a single Commissioner's plea for moderation. However, the problem is not one of moderation, but rather of seeing the full dimensions of the problem. This the Report does not do.

Neither does the Report contain examination of the costs of integration. The costs of transporting children, especially young ones far from home, can be considerable, particularly in terms of students' time in transit. Intense conflict within and around the schools is often the result of parent and student resentment of integration. The instructional program can and does suffer. Whether or not children experience short term academic gains from integration is unclear. The Commission is right in saying these concerns should not deter actions based on moral or ethical grounds. But certainly the Commission should have studied the costs and included them in the analysis. We should at least know what to expect from choosing to do the right thing. Instead we get detailed case studies of the technical feasibility of achieving particular pupil distributions. This seems to be another case where conventional wisdom replaces analysis.

The treatment of non-public schools is perhaps the most useful section of the Report. The Commission's interpretation of the Constitutional constraints on aid to religious schools is forthright and difficult to fault. There could have been more discussion of the underlying political and social rationale for the First Amendment, but that is a minor point for this work. One major contribution of this section is the exploding of the myth that aiding non-public schools will result in substantial cost savings. Another is the demonstration that the non-public system is not in danger of imminent collapse and that considerable efficiencies are possible within that system. The Report shows also that much of the fiscal crisis in Roman Catholic schools results from lack of support by Catholics, not the state. In short, the Commission's position on this topic is soundly stated and soundly supported by data in most places. It is a measure of the conflict on this matter that the non-public school position generated the largest (in terms of words) dissent among the Commissioners. It is in these minority statements that faulty logic and specious conclusions cloud the issue.

Only two points of omission deserve mention in this section. First, the non-public schools are often cited as sources of diversity and healthy competition in education. That could and should have been investigated. Second, the Report might have mentioned the active debate within the Catholic Church regarding support of schools, and especially the anti-school position of the National Association of [Catholic] Laymen. However, neither of these small omissions detract significantly from the quality of this section.

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It is tempting to draw conclusions about the overall quality of the Commission's work from this first volume. But that will have to await a combined review of the three volumes. Hopefully the last two are not as badly flawed as the first. Hopefully they do not concentrate on the technical minutia of policy and miss major questions. If policy is to be based in part on analysis and empirical re-



search, the design must be better than this. If it is not, the research and analysis are wasted, and bad policy may go about clothed in the appearance of rational decision making. That kind of misrepresentation is worse than the missed opportunities for analysis in this Report.

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DISCRIMINATION AGAINST WOMEN: CONGRESSIONAL HEARINGS ON EQUAL RIGHTS IN EDUCATION AND EMPLOYMENT. Editor: Catherine R. Stimpson. R. R. Bowker Co.: \$13.50.

*Reviewed by Shirley R. Bysiewicz<sup>1</sup>*

Whether or not you believe that the lack of equal rights for women is a major issue facing society today, this book will convince you that it is. The book consists of Congressional Hearings started on June 17, 1970 by the Special Subcommittee on Education, composed of fifteen male members. It should be noted that no more than four men ever appeared at one time during the hearings. The hearings were the first ones held by the Honorable Edith Green before a Congressional Committee on the subject of sex discrimination in education and employment. *Discrimination Against Women* is an edited version of the Government Printing Office's two-volume edition of the hearings. Some repetitive materials were eliminated and listed in the index of omissions. The testimony presented is well documented in the following areas: women and the American scene; women and work; women and the law; women and education; women and the professions; women and government action. There is also a very practical section on "Model Remedies" with resolutions against sexual discrimination by the American Sociological Association, the National Organization for Women, and the Platform on Women's Rights of the New Democratic Coalition.

Many important statistics are provided. For example, it was shown that women pay more than men for fringe benefits at the State University of Buffalo while receiving fewer benefits. In the area of higher education, 14 percent of faculty at the University of Buffalo are women; but only 5 percent are full professors. As of 1970, according to testimony of Diane Blank, a former law student, the New York University School of Law had never hired a full-time woman professor of law with tenure. Another interesting statistic showed a higher percentage of women received graduate degrees in 1930 than in the 1960s. Data are provided on the number of physicians in the United States as compared to other countries, along with numerous other statistics on female workers who constitute 40 percent of the American labor force.

The Hearings dealt with Section 805 of House Resolution 16098 of the Omnibus Post-Secondary Education Act of 1970, which would have amended the Civil Rights Act of 1964, to prohibit discrimination in employment on the basis of sex and would have removed the exemptions of the Civil Rights Act for executive, administrative and professional employees. Also, the exemption would have been removed from the Equal Pay Provisions of the Federal Loan Standards Act. Unfortunately, Section 805 of the Omnibus Higher Education Bill died in the

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second session of the 91st Congress. Section 805 may have failed in 1970, but its aims and purposes were brought to fruition in another bill which became part of the Higher Education Act of 1972. The Equal Opportunities Act of 1972 also realized the aims of Section 805, as did the Equal Rights Amendment, passed in the same year.

R. R. Bowker Co. is credited with circulating this important legislative history of the women's movement. Although these hearings were obtainable from the Government Printing Office for much less than the books' \$13.50 list price, the hearings are now out of print. Bowker's hard cover format is more readable than the original hearings and can reach a larger segment of the public because a private publisher advertises more widely than the Government Printing Office. I recommend this book for college and university libraries, as well as for law libraries that have not obtained the Congressional Hearings on Section 805 of the Omnibus Post-Secondary Education Act of 1970.

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THE COURTS AND THE SCHOOLS. By Richard Dobbs Strahan. Lincoln, Nebraska: Professional Educator's Publications, Inc., 1973. Pp. 148, \$2.75.

*Reviewed by David Schimmel<sup>1</sup>*

Too often, books on school law frighten, confuse, and alienate teachers. Although teacher rights have been constantly expanding during the past two decades, many texts present school law as a technical system of abstract rules, decisions, and policies which limit and jeopardize the unsuspecting teachers. Many lawyers and professors, for example, emphasize the legal problems and risks of teachers rather than their expanding freedom and civil rights. *The Courts and the Schools* is an attempt to move away from this negative approach and to provide a better balance between the rights and risks of being a teacher.

Professor Strahan has undertaken an important and difficult task. Built on the recognition that most teachers enter the classroom without any background in school law, the book is designed "to give insights" to the beginning teacher about relevant court decisions and how these can influence practices in the public school classroom. This 148 page text provides a brief introduction to a wide range of subjects such as our common law background; the participation of national, state and local governments in establishing educational policy; the role of the school district, school board and school administrators; teachers' rights and responsibilities; collective negotiations; school finance and equal protection; and the expanding rights of students.

Several features of the book make it especially useful for student teachers. First, each chapter begins with a brief historical introduction. These introductory paragraphs put the current legal issues into a larger perspective and illustrate the dramatic changes that have occurred in many areas of school law in the past few decades.

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Second, each chapter concludes with an annotated bibliography of selected books and articles. Typically, Professor Strahan briefly describes and comments on eight to twelve titles that are especially relevant to the topics discussed in the chapter. The bibliographies in the first and second chapters also include annotations to important judicial decisions. These case descriptions would have been equally useful in later chapters and perhaps could be added to a subsequent edition.

Third, the book tries to address the human implications of current judicial and legislative developments. The author does this especially well in describing the problems of local school administrators who get caught in the middle of conflicting demands by increasingly vocal student, parent, and teacher groups. He empathizes, for example, with the dilemma of the traditional principal who is frustrated by the increasing hostility of students (who see him as an authoritarian representative of "the establishment") while at the same time, teacher and community groups are lobbying to diminish the little power he had to respond to changing educational demands. If pressures continue to build, Professor Strahan wonders whether "most of the job satisfactions of such positions will be destroyed and few qualified individuals will want to take on such a task."

Two areas of concern might be noted: occasional lapses into "legalese" and a few omissions in discussing student and teacher rights. While Professor Strahan tries to minimize the use of unnecessary legal jargon, some still slips by. In describing the powers of school boards, for example, the author points out that they are classified as "either mandatory, directory, or permissive," and that the duties imposed "are often described as either ministerial or discretionary." While these differences in classification may be legally significant, the inclusion of such terms (even if they were explained and distinguished) tends to be more confusing than helpful to most undergraduates. This type of writing, however, is not typical of the book which generally succeeds in "translating legalese" into English.

A second area of concern is the omission of several important subjects and cases in the chapters on teachers' and students' rights. While the treatment of student rights is generally complete, the discussion of equal protection does not mention the issue of sexism and the cases upholding equal access by female students to courses and sports previously considered for boys only.

The section on "Personal or Political Rights of Teachers" is less complete. Only three sentences are devoted to academic freedom in the classroom. The text does not discuss freedom of speech outside the classroom or the major Supreme Court decisions (such as the *Keyishian* and *Pickering* cases) which substantially expanded that freedom. Nor does the book mention the increasing litigation concerning regulation of teachers' private lives in such areas as homosexuality, drugs, and drinking. An introductory text can not be expected to deal fully with issues of teacher rights. But such rights are at least as relevant to prospective teachers as "The County Superintendent," the "Legal Status of Board Membership," or "Personal Liabilities of School administrators"—each of which are subsections within the book.

Finally, *The Courts and the Schools* illustrates the advantages and limitations of the text approach. The approach has the advantage of being both compre-

hensive and brief. The problem with this method is that it often seems abstract and legalistic. It may be hard for many students to identify with the issues discussed in a text—even those concerning the rights of students and teachers. This is not to argue that the traditional law school case book would be better for beginning teachers. But it is a reminder that including cases with which a student can identify makes issues come alive; hence, the case approach may be even more important for undergraduates than for law students. Had Professor Strahan included a fuller description of one or two current controversies in each chapter, readers might have been better able to get a feeling for the lively realism and human conflicts which underlie the legal conclusions discussed in his text; and they might have better understood how these conclusions emerged out of the long, hard, and sometimes bitter controversies with which parents, teachers, school boards, and judges have been struggling.

At the conclusion of his text, Professor Strahan bids education students enter one of society's "new frontiers;" he invites them to join in a creative effort to "translate court decisions into operational programs" that will meet the needs of a "new ethic" which will broaden standards of due process and equal protection. To achieve this goal, schools and departments of education must begin to provide every prospective teacher with a higher level of legal awareness than they have in the past. If we expect the schools to effectively teach a respect and understanding of the law, it is important for teachers to understand how the legal system works in the schools and how it can work for them. Schools of education are just beginning to consider their obligation to help each teacher become legally literate. While this goal is distant, it is also critical; and more introductory texts such as *The Courts and the Schools* are needed to help us get there.

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THE SCHOOL ADMINISTRATOR'S LEGAL HANDBOOK. By Larry L. French. Norman, Oklahoma: The Univ. of Oklahoma Law Center, 1972.

*Reviewed by Allen Schwartz*<sup>1</sup>

*The School Administrator's Legal Handbook* is not a law book and is not designed to replace consultation with an attorney for the handling of specific legal problems which a school administrator may encounter. Rather, the book's stated purpose is to apprise administrators of their legal rights and to provide them with general guidelines that will be helpful in carrying out their duties and functions within the complex and quickly-changing field of school law—a field so laden with pitfalls and traps for the unaware that Mr. French counsels that school administrators adopt a policy of "preventive litigation"—positive action to avoid potential legal conflicts. As outlined by the author, preventive litigation is a common sense approach to school administration, rather than an authoritarian one. First, each school board must adopt a set of rules and regulations and methods and procedures under those rules to be followed in the event of difficulties. Second, a complete and documented record of all relevant events

<sup>1</sup> Partner, Robbins, Schwartz, Nicholas, & Lifton, Chicago, Ill.

that transpired during the event must be made and preserved. Finally, the administrator should operate under the guidelines of fundamental fairness when dealing with faculty, parents, and students.

The application of the above approach to legal problems in specific situations is illustrated by the author's discussion on how to dismiss an unsatisfactory non-tenured teacher where the law requires reasons for dismissal. A teacher may be thus dismissed for "cause", such as willful neglect of duty, cruelty, and incompetency. However, a dismissed teacher may be entitled to procedural due process of law, if dismissal is for constitutionally impermissible reasons or the dismissal infringes upon his liberty or property interests. An improper dismissal in that case would mean a possible damage award, inconvenience and expenses to the school district and possibly reinstatement of the teacher. To avoid these disheartening and possibly disruptive events, Mr. French proposes that administrators adopt the following plan: (1) A record should be prepared of the teacher's history in the school district which includes documentation of all conferences and consultations with the teacher, complaints, reports by school administrators, and similar relevant data; (2) The teacher should be given an opportunity to explain the charges at an informal board meeting; (3) Notice of Dismissal accompanied with a statement of reasons (which if properly documented should be no trouble for the district) may also be issued; or even a limited type of hearing given if the situation warrants it. A school board following this procedure, may still be sued since the courthouse door opens to any claimant. But, the school district's chance of success is enhanced and indeed the teacher may never sue if he sees the strong foundation the school district has laid.

Several chapters of the book are devoted to how to deal with students. Mr. French discusses demonstrations, underground newspapers, unfair grading, search and seizure of lockers, and dress codes. The chapter concerning school discipline is particularly helpful.

Actions by a school district in disciplining a student is "state action" and therefore subject to the Fourteenth Amendment limitations of due process of law, i.e., the student cannot be dealt with in an arbitrary and capricious manner. However, school officials do have authority to dispense discipline if done in a reasonable fashion. The concepts of preventive litigation should be adhered to by the administrator in dealing with students. Regulations and procedures to be utilized should be promulgated. A record of all actions taken should be kept and preserved. Most important, the appearance of arbitrariness should be avoided. All students should be treated fairly and equally and the punishment should be neither abusive nor excessive. Under the conditions the author notes, courts are hesitant to intervene in school discipline cases.

Also helpful is the book's chapter on "impediments". Included with this discussion is the problem of effectively dealing with an unmarried pregnant student. Traditionally, the remedy for this delicate problem took the form of punishment, such as expulsion or denial of participation in extra-curricular activities. Mr. French advocates the implementation of programs that will benefit the student. He urges administrators to permit home instruction for the girl until she can return to regular classes.

Although the *School Administrator's Legal Handbook* is principally designed to aid high school officials, a significant portion of the book is devoted to elementary school administration. Mr. French also includes recommendations to school board members.

School law is currently in a state of rapid flux and change. Thus the book's discussion of pregnant teachers is already outdated by the recent Supreme Court case of *Cleveland Board of Education v. LaFleur*. Any reader must be cautioned against accepting the suggested principles of law without consultation with his lawyer. One regrettable lapse in the book is the absence of citations. This makes it impossible for a lawyer to check out Mr. French's conclusions or to "shepardize" to see if the case law is current. Mr. French has succeeded in reducing school law into a workable system to guide school administrators in the performance of their duties.

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STUDENT PROTEST AND THE TECHNOCRATIC SOCIETY: THE CASE OF ROTC. By Jack Nusan Porter. Milwaukee, Wis.: Zalonka Publications, 1971. Pp. 150, \$5.95.

*Reviewed by William S. Bach<sup>1</sup>*

The scene is Northwestern University, Evanston, Illinois. The time is Fall 1968. The University is just beginning to feel the impact of student activism and protest. This protest movement has begun slowly at Northwestern. Unlike at Berkeley and Columbia, there had been little interest in protest at Northwestern until the Viet Nam teach-in in April 1967. In fact, the author describes the University community as being more interested in football than politics.

The major emphasis of Porter's efforts is devoted to detailing the protest by Northwestern University students against Naval ROTC courses. To the author, this protest is symbolic of the protest against the so-called "Technocratic State", which he generally defines as a corporate state which uses applied science to solve human problems at the expense, often times, of human dignity and freedom. Of course, one of the primary elements of such a society is the military-industrial complex. ROTC is an arm of that complex which reaches into the university community, apparently in an attempt to make the university a part of the complex. The author also tries to analogize the university to a corporate state and the protest against the ROTC to the protest of people against the inhumanity of that corporate state. The author's conclusions about the reasons and effect of student protest against ROTC has an instrumentality of government, which tries to curtail the independence of the university, are understandable, but the further conclusion which he draws based on the symbolic role he assigns to the university as a small corporate state are not convincing despite an entire chapter (one-fifth of the book) on the organizational structure of Northwestern University and its comparison to a corporation. The university's reason for existence and that of a profit-making corporation are not the same despite organizational similarities which exist in Porter's mind.

The author details the protest activities taken against ROTC and relates

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them in time to such national events as the death of the students at Kent State University. The conclusion, however, that Porter reaches is that the protest against ROTC failed despite the curtailment of credit in certain colleges at the university, because the program did not go off campus as requested by the protesters. Ironically his own survey showed that only about 25% of the students actually wanted ROTC off campus. This he correctly points up as one of the real reasons behind the limited success of the protest. If the book shows anything it is the history, and results of the protest movement in this one limited area. The author, however, draws from this ROTC protest and its results the conclusion that the student protest in the nation as a whole failed because the Technocratic State was too strong in relation to the strength of the radicals involved in the protest movement and because the liberals involved in that movement were too disorganized in their protest. It would seem that the limited data available from one protest would be questionable support for these conclusions; the sampling is just too small.

Porter's work further is one which could be condensed into about one-third the number of pages it fills. The first chapter, detailing the organization of the Board of Trustees, the administration and the faculty of Northwestern University may be interesting to students, faculty or alumni of that university, but it puts the average reader quickly into a state of boredom from which he has a difficult time recovering. The next chapters of the book are merely historical narratives of the events of student protest, local and national. Not until the next to last chapter of this short book does the author clearly show himself to be an advocate of change and a supporter of the protest movement. At this point he concludes that meaningful change was not accomplished by student protest and can only be accomplished in the 1970's by these same students, now graduated, who believe in the reasons for change working individually through the institutions which they entered following their graduation.

The author's survey of student opinion and his analysis of the reasons of the ultimate failure of the ROTC protest at Northwestern University are well presented and the conclusion is supportable. Unfortunately he chooses not to stop at this point but tries to make his limited data the basis for a discussion of the whole student protest movement and its place in the Technocratic Society. The leap to such conclusions without adequate documentation makes the entire work less valuable. Rather than being at the center of society where he apparently envisions himself, the author seems to be more on the periphery from which point his analogies and conclusions must necessarily suffer.

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FACULTY BARGAINING IN THE 70's. Editor, Terrence N. Tice. Ann Arbor Mich.: The Institute of Continuing Legal Educ., 1973.

*Reviewed by Donald E. Walters<sup>1</sup>*

In 1973, a new sense of order and depth has been added to the literature dealing with the problems of collective bargaining at post-secondary institutions

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Carr & Van Eyck's *Collective Bargaining Comes to the Campus*, Duryea & Fisk's *Faculty Unions and Collective Bargaining*, and Ladd & Lipset's *Professors, Unions, and American Higher Education* all appeared early in 1973 to add to the understanding of the issues and problems associated with faculty unionism in American Higher Education.

Now another significant contribution has been made to the exploding collective bargaining literature. Terrence Tice has gathered together an important Collection of Essay's and Papers which examine several central theoretical and practical issues raised by faculty unionism.

Part of Tice's book is a sample of papers delivered at a Conference sponsored by the Institute of Continuing Legal Education at Ann Arbor, Michigan; several other chapters, however, represent papers independently solicited by Tice from authors around the country. The organization of the book—perhaps as a consequence—is somewhat uneven. The imperfection is by no means fatal, and is more than compensated for by the quality of the papers selected by Tice. The book is arranged in 3 parts. Part I is entitled "The Approach to Bargaining". Part II "The Bargaining Process", and Part III "The Situation in the States." Tice has richly supplemented the book by appendices which relate to the issues raised in the individual chapters.

Alfred Sumburg opens the book with a chapter which focuses on the nexus between the rights of faculty to bargain under statute and issues of academic self government. He provides an important insight into the statutory effects of bargaining on such matters as academic freedom, academic due process, the principles of peer judgment, and, most importantly, the right of faculty self determination.

Later Harry Edwards, William McHugh, and Terrence Tice, in separate chapters, echo and expand Mr. Sumburg's concern for these matters. These and the Sumburg chapter ought to be read together since their theoretical concerns are often complimentary. Edwards, for example, after a helpful general review of the legal aspects of the duty to bargain, suggests that one of the "most troublesome aspects of collective bargaining in academia is that it implicitly rejects the notion of collegiality." He proposes that collective bargaining may become an alternative to such ideals and traditions. However, when Terrence Tice examines alternatives to faculty bargaining, he provocatively concludes that the opposite may occur, and that the traditional model of governance, based upon collegiality, may become the alternative to collective bargaining. He cites the search of the faculty at the University of Michigan for just such an alternative, as an effort that deserves the serious attention of all faculty and administrators involved in collective bargaining. Mr. McHugh deals with the effect of bargaining on still other academic traditions and policies and gives special attention, in an important chapter, to the impact that negotiations may have upon tenure.

The chapters by Tracey Ferguson and William Lemmer will be of special interest to private colleges and universities. Together they provide an exhaustive review of the NLRB decisions affecting issues which include such practical issues as who shall be in the unit, what the size of the unit shall be, the rights of graduate assistants to organize, and the status of department chairmen. Ferguson also



notes the extent to which the NLRB has thus far dealt with the notion of "collegiality."

The tone of the book turns decidedly practical in the chapters by David Kerr and Ray Howe, as each presents a number of suggestions and guidelines for negotiators. Kerr's chapter will be of help to those who are preparing for negotiations; while Howe's suggestions should be especially useful to those who are at the table.

In a chapter dealing largely with Community College problems, Thomas Joyner analyzes the components of mediation and fact finding. It provides, despite its limited focus on 2 year institutions, a logical transition to the book's final chapter which is an exhaustive treatment by Maurice Benowitz on "Grievance and Arbitration Procedures". A central issue, with yet unrecognized implications for colleges and universities, is the question of whether matters of academic judgment can be excluded in collective bargaining agreements from the arbitrators review. Benowitz treats this and other issues with a clarity which will aid every negotiator who is responsible for drafting contract language.

In part III of the book, Terrence Tice reviews "The Situation in the States", examining both the existing labor statutes and the extent and status of bargaining at 2 and 4 year institutions. Regretably, portions of this extremely helpful treatment are already outdated as a result of changes in the law of some states which have occurred since the book's publication. Nevertheless, a careful reader will find this final section helpful in understanding the national picture.

Robert Fleming observes in the introduction to this book that, "As higher education continues to be confronted with the option of collective bargaining, rational analysis will serve far better than emotional outpourings." Terrence Tice and the contributors to *Faculty Bargaining in the 70's* have indeed helped to make the continuing debate more rational.

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FACULTY POWER: COLLECTIVE BARGAINING ON CAMPUS. Editor, Terrence N. Tice. Ann Arbor, Mich.: The Institute of Continuing Legal Education, 1973. Pp. 368.

*Reviewed by Hugh Jascourt*<sup>1</sup>

The academic community, the source of much of our literature on public sector labor relations and the "home" of many of the neutral third parties active in the field, has suddenly had to devote its attention to its own campuses. The result is an outpouring of literature dealing with the possibility that collective bargaining might invade the once inviolate sanctity of higher education.

Whether due to the problems being "too close to home" or whether due to lack of understanding of the collective bargaining process, many of these works have been of limited value. *Faculty Power: Collective Bargaining on Campus*, suffers from much of the same malady. It reflects much of the prevailing confusion and failure to come to grips with the practical dynamics of union organiza-

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<sup>1</sup> Labor Editor, Journal of Law & Educ.

tion which has registered unprecedented gains among the ranks of professionals and is causing "non-union" associations to convert into labor organizations as a way to survive against competition.

Nevertheless, *Faculty Power* presents a smorgasbord of authors and viewpoints that, despite a number of failings to be discussed later, provides some invaluable insights. To the reader not conversant with collective bargaining on the college campus it points up the stresses currently provoking painful assessments. And to the reader affected by the potential of unionization there are some articles that should be required reading.

Three articles demand attention not only because of articulation and cogency but because they confront the central issue that must be faced: is the college campus a world apart or is the experience with collective bargaining elsewhere worth examining because of its lessons?

The first is the five-page introduction by Theodore J. St. Antoine, the Dean of the University of Michigan Law School. He poses stimulating questions, such as whether higher pay brought about by union efforts will result in the usual industrial response of productivity improvements and what that means in the context of higher education. In other words, does it portend the reduction of small seminars and individual research projects accompanied by an increase in large lecture courses? He notes the growth of political power out of unionization and wonders whether it might be greater in the case of faculty unions due to a greater flexibility in utilizing time to engage in political efforts and due to a greater propensity to be knowledgeable and articulate.

Much of the union activity has taken place in public institutions in Michigan. The Chairman of the Michigan Employment Relations Commission, Robert G. Howlett explains many of the pivotal decisions that have affected the development of the law in addition to explaining why he thinks the scope of bargaining should be broad. More controversially, he attempts to discredit the distinctions between the public and private sector. He particularly takes aim at the typical assertion that decisions in the public sector are political rather than strictly economic, pointing out that public institutions and corporations both have budgets, problems in raising income and in increasing efficiency.

Howlett's thought process become significant in the light of the rights accorded to employees at "private sector" institutions of higher learning. Such employees have the right to strike, more liberal treatment in obtaining units they desire (therefore enhancing the potential for winning elections), and a wider scope of bargaining than is usually accorded public sector employees in the minority of states which have enacted statutes requiring some form of collective bargaining for employees of the state government. Despite attempts by various authors in *Faculty Power* to rationalize different treatment for higher education, there is no attempt to justify the disparate treatment between public and private sector institutions.

Mr. Howlett's article is also singular in that he does not treat higher education as *sui generis* so that no other labor relations experience is instructive. Most of the other authors in *Faculty Power* are so parochial that it is easy to understand why union adherents view collegiality as a mythical unpersuasive barrier

to collective bargaining. At the same time, the selection of authors does force the academic to occasionally glimpse at the rest of the world of labor relations.

In this context, it is most revealing for Tracy H. Ferguson, the veteran management attorney from Syracuse, New York, to remind us that it was not the unions who sought to have the National Labor Relations Board assert jurisdiction over Cornell University. Instead it was his client, the University, which petitioned the NLRB due to the inadequacies in the New York State private sector labor relations law, such as the absence of unfair labor practices by unions. He traces the history of this landmark case which involved non-academics, the Fordham University decision, the first NLRB case involving academic employees, and others.

Unfortunately, there is too little space devoted to the thoughts of the three gentlemen mentioned and too much devoted to publishing the smorgasbord presented at a conference on higher education labor relations conducted in 1971 by publishers of this book, the Michigan-Wayne State University Institute of Continuing Legal Education. Fourteen chapters are cramped into less than 152 pages. Over half of the book, which proclaims itself as "the only one of its kind in the field," is devoted to appendices. The further claim is made that "it has been designed as a lasting foundation for any work that follows."

Except in a few instances where the authors have been able to lift themselves above the limitation of the format, the claim falls short. Recapturing speeches is a difficult task. A speaker employs a different style to orally communicate and may desire to leave a certain image or impact that can be conveyed only by physical presence. When transformed to the printed page, otherwise brilliant oratory and inspiring thought becomes un compelling text. The broad sweeping statements captured by the printed page lead to an imprecision that tends to be misleading and thwarts the purpose of laying a foundation for further work and thought. Despite the variety of speakers, the sparse allocation of space to union spokesmen leaves an imbalance that further weakens the vaunted foundation.

The editors would have rendered a greater service if they had culled out the more thoughtful statements at the conference and developed a book around them. The opportunities are plentiful as evidenced by Charles M. Rehmus' alternative to bargaining and traditional governance, by Alfred D. Sumberg's accusation that public sector legislation has been intended more to curtail lobbying efforts of public employee organizations rather than to extend them rights, by Harry T. Edwards concern over who will be the public sector employer—the University President or the Board of Regents or the state legislature, and by R. Theodore Clark's assertion that the Federal sector should be emulated in that management rights should be spelled out by law and the scope of bargaining should be gradually broadened as the parties gain experience.

*Faculty Power* may give an invaluable broad brush picture of what may become an explosive area in light of the financial difficulties besetting the colleges and the universities and in view of the innumerable potential conflicts between traditional faculty governance and traditional modes of unionization. However, it does not provide a reliable cornerstone for further reading. The reader is left without much information to make judgments as to the applicability of much

of the discussion to two-year colleges. Similarly, the same gulf of information is left between the large multi-campus institution and the numerous small institutions.

In addition, the various appendices fail to give an adequate starting point. The first appendix is a summary of 29 state laws under 11 headings. Leaving aside the changes wrought in a short time by the quickly changing scenario of the public sector, the summary is quite lacking in accuracy and judgment, especially as it involves the areas of most concern to higher education. For example, it does not deal with the question of who is the employer, the role of the legislature or the interface with other laws such as tenure, or the supremacy of the collective bargaining agreement. The summary of Pennsylvania's law doesn't indicate its management rights provision even though this is an area of critical concern in the articles.

The second appendix reprints the two model state acts proposed by the Advisory Commission on Intergovernmental Relations, but the acts being considered by Congress are not reprinted, nor is the report of the American Assembly.

The 195 pages of appendices include, among other things, the NLRB decisions in the Cornell and Fordham cases, the NLRB's denial of the petition of the American Association of University Professors for issuance of rules pertaining to colleges and universities, a listing of bargaining agents at 163 institutions of higher education, a summary of significant contract provisions at eight institutions, and a bibliography purporting to cover most of the published literature since 1965 plus some other background materials.

Ironically, if all this effort by highly trained competent professionals does is to demonstrate the rather primitive level of the current state of the art and the need for better information on which to base the crucial decisions ahead, *Faculty Power* will have fulfilled its self-proclaimed prophecy of a starting point for others.

