

The Journal of Law and Education

Volume 8 | Issue 3

Article 12

7-1979

Book Reviews

Follow this and additional works at: <https://scholarcommons.sc.edu/jled>



Part of the [Law Commons](#)

Recommended Citation

(1979) "Book Reviews," *The Journal of Law and Education*: Vol. 8: Iss. 3, Article 12.

Available at: <https://scholarcommons.sc.edu/jled/vol8/iss3/12>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in The Journal of Law and Education by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

Book Reviews

LEGAL HANDBOOK FOR EDUCATORS. By Patricia A. Hollander. Boulder, Colorado: Westview Press, 1978, Pp. 287. \$14.50.

*Reviewed by Perry A. Zirkel**

Like many of the other small books in this field, the *Legal Handbook for Educators* provides a lot but promises even more. The book could have achieved singular success largely by replacing redundancy with specificity and by restricting the primary audience to higher education.

The size of the book is compact, consisting of about 200 pages of text. The scope of the book is comprehensive, covering student, faculty, and administrator concerns in elementary, secondary, and higher education. Specifically, the book consists of two introductory chapters focusing on new and traditional theories of legal liability applicable to educators; two student chapters divided into entry-level and postentry concerns; two employee chapters following the same chronological categorization and encompassing a dual faculty-administrator focus; a final chapter dealing with legal issues concerning funding and facilities; and two appendixes relating to federal statutes and professional standards.

The book is intended to be a practical guide, including "legally loaded everyday situations" and "do's and don'ts [sic]" recommendations. Inasmuch as the language is eminently readable and the organization is easily comprehensible, practicality is achieved. However, the aforementioned situations and recommendations do not attain their promised potential. Repetition and generalities abound. For example, *Wood v. Strickland* and *Goss v. Lopez* case situations are each unnecessarily repeated several times. As for overbreadth in recommendations, the second chapter provides the following example in the sovereign immunity section: "The best advice is to avoid situations of liability when at all possible." Similarly, this important liability chapter ends with the following recommendations:

In general, educators should take care to act reasonably, with careful forethought, and without haste. Learning to recognize legal pitfalls will assist in preventing them. When there is doubt as to a correct response, one would be wise to delay action until legal advice has been sought and suggestions received as to possible alternative courses of action available.

Space for more concrete recommendations would be made available by reducing the redundancies. Rather than repeating the explanation of legal concepts, like due process, and the results of judicial decisions, like *Wood and Goss*, more frequent and specific cross-references would have sufficed. Reiterations

* Dean and Professor, Graduate School of Education, Lehigh University, Bethlehem, Pennsylvania.

and recapitulations are helpful for the intended audience of lay educators, but they would have been more effective if limited to a separate section at the end of each chapter rather than layered within the sections that they summarize.

For a small book, the dual public-private and administrator-faculty dimensions are appropriately and competently covered. However, the added duality of basic (i.e., elementary and secondary) and higher education is, in football terms, one "double coverage" too many. The author argues that there are more similarities than dissimilarities in the law concerning these two levels of education. This may be so, but similarity alone cannot be the controlling criterion to delimit the length of a handy book. Many legal concepts, like class actions and crimes, are generic without taking on a special meaning or application in the context of education. Other more contextual concepts, like collective bargaining, would require treatment of legal developments in the larger public and private sectors using the author's similarity test.

It seems obvious that the author is more at home in the higher education field. Notions such as separate bargaining units within a school district for elementary and secondary employees reveal a remoteness from the basic education field. Although the legal differences between basic and higher education are explicitly recognized in some areas (e.g., negligence, age discrimination in admissions, student and faculty dress codes, and parochialism), they are neglected with a skew toward higher education in other areas. For example, statutes permitting student input in collective bargaining and decisions regarding the negotiability of collegial practices are described without specifying their higher education context. Similarly, differences in the law relating to academic freedom and student publications are not clarified in terms of the basic v. higher education contexts.

By limiting the focus to higher education, the book could and should still contain many rulings emanating from basic education, just as it aptly includes decisions from noneducation contexts that apply to higher education, like the cases concerning damages under the Age Discrimination Employment Act. Although much of the basic education material would remain for the higher education audience, such a change in title and focus would eliminate the inevitably unfulfilled expectations of the basic education audience. Thus, irrelevant and incomplete information, such as the discussions about catalog statements, tuition fees, and placement services, and the neglect of state statutes on collective bargaining, teacher tenure, and competency testing, would be moot issues.

The book could be improved additionally by greater attention to jurisdictional parameters and legal citations. Although the author occasionally clarifies the jurisdictional scope of a decision, in many cases it is left unspecified or at least unexplained. For example, the provisions of the *Everett v. Marcuse* consent decree are outlined in chapter 2 and again in chapter 4 without clarifying that such a pronouncement has no precedential effect. Although generally provided at least as examples, case citations are missing for some statements. Further, the problem is compounded by not specifying the level and location of the court for some of the entries in the Table of Cases.

The two appendixes are generally useful, the exception being the indirect

treatment of the professional standards of the NEA and AFT. The lack of an index impairs the reference utility of the handbook.

Nevertheless, the book is not without singular strengths. In addition to its compact and comprehensible characteristics, the inclusion of applicable non-school cases, individual and institutional taxation rulings, and useful information related to liability insurance are positive points particular to this handbook.

On balance, the volume fits well next to other small education-law books that have recently emerged to start to fill the void on the lay educator's professional bookshelf. Its strength is its weakness, in that it has the potential to stand out in this important section of the literature. It has the beginnings of a uniquely useful handbook, for which it points the way as a future edition or for another author.

COLLECTIVE BARGAINING IN THE PUBLIC SCHOOLS, By Thomas J. Flygare. Bloomington, Ind.: The Phi Delta Kappa Educational Foundation, 1977, Pp. 49, 75 cents.

*Reviewed by Hugh D. Jascourt**

This booklet is titled a "fastback." A fastback is intended by the publishers to be written "in non-technical language so that beginning teachers and the general public may gain a better understanding of educational problems." This is a difficult undertaking when applied to the complex field of public sector labor relations, which is characterized by vast diversity and continual change. It is a difficult task for an author to choose what to highlight in just 49 pages and still not oversimplify. The author is faced with being accurate yet interesting and understandable to the layman.

The author successfully meets this tough challenge, but the feedback fails due to the author's lack of understanding of important aspects of the subject. However, it is difficult to criticize this booklet since it covers the waterfront with an engaging, insightful style, picking out the vital components of labor relations and translating them so they can be comprehended. Unlike longer books not having to select out only the most significant factors, the booklet covers areas that are frequently overlooked in discussion of labor relations in public education but that should be covered because of their importance.

Among these overlooked areas to which the author devotes attention are the duty of fair representation and the fact that school boards have to deal with noninstructional personnel (as well as teaching personnel), who frequently unionize. However, he ignores professional nonteaching personnel other than administrators and gives short shrift to nonprofessionals; he shows little recognition of the competing considerations involved and of their importance. Ironically many works forget there is a bargaining process that is the core component of this subject, but the author highlights it and excellently depicts

* Director, Public Employment Relations Research Institute, Labor Relations Editor, *Journal of Law & Education*.

the process. He does omit, however, describing how management puts together its package and the political and management considerations affecting the package and strategy. The result tends to give the erroneous impression that management merely reacts to the union, whereas today management frequently has its own agenda.

These little faults are forgivable, at least in the context of the exigencies of a fastback. Other forgivable omissions include the author's failure to ever describe what the term "unit" means and how it's determined and also the fact that a number of jurisdictions still preclude voluntary recognition and require an election in all cases.

What is not forgivable is his description of the obligation to bargain and the dispute resolution processes of mediation, impasse (interest) arbitration, and grievances.

With regard to the obligation to bargain, an amazing phenomenon has occurred. Despite diverse laws, many states—through either judicial decision or administrative ruling—have arrived at a common way to determine what is negotiable: they have used a "balancing test". The author not only fails to mention this but also neglects describing what has to be balanced. He illustrates scope of bargaining by referring to teacher demands on disciplining of students. He does not reveal that discipline not only directly affects the policy of the school board—which may be representative of highly emotional community attitudes—but it also affects the rights of the pupils themselves. In fact, the legal characterization of how PERBs have treated discipline is erroneous due to an inadequate description of the permissive area of bargaining and of the consequences once the employer starts discussing (or even agrees to) matters on which it is not obligated to negotiate. He does not really address the very difficult problem of the priority of state personnel or education laws over the collective bargaining law or the supremacy of contractual provisions over existing government rules and regulations. The complexity of these problems does not excuse their adequate treatment. Otherwise the reader is unaware of limits placed upon the parties that when overlooked at the bargaining table are frequently raised later by taxpayers or the local legislative body or by a subsequent school board and the remedying of which is usually accompanied by great trauma and conflict. Here is an area begging for the understanding advertised by the fastback, but instead, it leads to misunderstanding.

Even more egregious is the author's statement that "the techniques of fact-finding are not dramatically different from those of the mediator." The mediator operates informally and tries to be a messenger between the parties. The fact-finder may (and should) have the goal of obtaining a voluntary settlement, but operates through the formal mechanism of holding a *hearing* to result in public recommendations. The author points to the public recommendations as the critical difference. This leads to a total misconception. The difference is in the process, technique, methodology, and tactics. This is why a disputant will reveal to the mediator what his bottom line is in hopes the mediator can use it, but the same disputant will never reveal it to the fact-finder, who may use it against him. Instead, he wants to provide to the fact-finder only his side of the story as in any other adversarial proceeding.

Although the author may perceive arbitrators as generally trying to "split the difference" between the parties and although others may share this perception, there is no support for this theory and none is cited. Novices reading this fastback will be unfairly led to believe this generalization, which is true of only a minority of arbitrators. In fact, the author goes on to assert that the reason for final-offer arbitration is to offset the "split the difference" approach of arbitrators whereas the real reason, acknowledged by the parties themselves, is so that the parties will not hold back something for arbitration. The goal is to have arbitrated only that which is genuinely at impasse. The author claims also that final-offer arbitration should be more acceptable to school boards since "it eliminates the arbitrator's ability to play it safe." That is not why school boards object to arbitration. Their perception, regardless of its validity, is that arbitrators do not take into account ability to pay and do not take into account the community's priorities superimposed on the school board.

These criticisms may appear to be those of an apologist for the school board position, but the absence of these factors in the fastback helps neither teachers nor the public to understand what the problems are and why they exist. The goal is for the reader to comprehend future events and hopefully to have a basis to form his or her own attitude. Such a goal is ill served by the author's depiction of the grievance procedure as merely a substitute for court litigation. He does not describe how a contract is intended to be a living document applied to the dynamics of the workplace. It is often impossible to write a contract that foresees certain situations, and sometimes the parties do not even try. Because they cannot agree they sometimes purposely create an ambiguous standard so that problems will be resolved on a case-by-case basis. Moreover, the procedure is a mechanism to resolve disputes without going to arbitration. And very few grievances get to arbitration. The author further disserves the needed understanding by making it appear that most court suits over grievances are contrivances to obtain court review, whereas the basis for court review reflects the basic difficulties of labor relations in the public sector. This is the area where courts have been most likely to differ not only between states but also within the same state. The courts have had to grapple with the remedies an arbitrator can impose (can he grant tenure?), the degree to which a legislative body retains final authority, the degree to which state or local regulations can limit what has been agreed to locally (as in the rules pertaining to sabbatical leave established by the state board of education), and when public policy precludes otherwise negotiated results (e.g., job security in the face of state-ordered cutbacks in spending). The author may not like these court challenges, but the issues are valid and are so important that they will point out the future of public sector labor relations more than decisions related to any other topics.

It seems a shame that such fatal defects mar this fastback in view of the author's gift for writing and his ability to meet the intended goals of the fastback. Otherwise this would be the ideal booklet for those in need of a quick overview or introduction to labor relations in public education. It is short enough, readable enough, and quick enough to the point to help those who at

the outset do not care to have more than a bird's eye view. Unfortunately, due to the problems described, that bird's eye view is greatly distorted. Perhaps the publishers will not let the author's talents go to waste; with editing and revisions, it could become one of the most important contributions to this field.

A LEGAL OVERVIEW OF THE NEW STUDENT AS EDUCATIONAL CONSUMER, CITIZEN, AND BARGAINER. By Robert A. Laudicina and Joseph L. Tramulota. Springfield, Illinois: Chas. C Thomas, 1976.

*Reviewed by Delbert K. Clear, Ph.D.**

It is bad enough not to be able to judge a book by its cover, but when the title doesn't describe what is inside, a reader has some right to be disappointed. Laudicina and Tramulota have not, in fact, written a book about the new student, *per se*; they discuss only the new student in higher education and, at that, have a strong orientation toward four-year, liberal arts institutions. They leave out entirely any discussion of students in secondary education, all of whom are "new" in terms of consumer, citizen, and, potentially, bargainer rights, and give little direct attention to the special characteristics of the large number of students in junior colleges and other two-year postsecondary institutions. Certainly they were not obliged to treat these populations if they chose not to do so, but their title might better have reflected the limited group they did choose to discuss.

Given that caveat, another seems in order. The book is a compilation of readings from a wide array of writers and speakers. As such, it reflects the variations of the individual authors' original purposes and styles of speaking and writing. Consequently, a unified point of view is difficult to discern. No logical, well-developed composite overview of the so-called "new student" emerges—he or she ends up a series of parts looking for a whole.

Some of the parts, however, are provocative and interesting in and of themselves, especially for student personnel administrators in postsecondary institutions. There is a laudable effort to provide sample guidelines, checklists, and procedures that can be used to institutionalize recent legal and statutory requirements. For example, the sections on audits for admissions officers, guidelines for recruiters, procedures to preserve confidentiality of student records, and contracts for student services and vendor agreements would be useful to anyone not having adequate procedures therein. Yet, one cannot help but wish that similar guidelines and checklists had been included for Title IX and Civil Rights Act compliance. The section on the age of majority and its implications for financial aids programs is particularly informative and provides a good updating on the status of this still changing topic.

Perhaps the most provocative selections are those that discuss the growing trend toward treating the student as a consumer and the university or college as an educational marketplace with product accountability. The two selections on the potential of students to organize and bargain collectively are equally

* Associate Professor of Educational Administration, The University of Wisconsin-Milwaukee

provocative, though the issues do not seem clearly drawn. Nevertheless, several matters are raised that deserve much thought and study. For instance, how will the institution respond as students organize for lobbying and other influence efforts? Can the bargaining model of students-as-employees be used for organizing students-as-students for academic or educational benefits? How will student bargaining impact be felt—through control and power exchange or through participatory influence? Is a bipartite model appropriate or must there be a tripartite representation of students, faculty, and administration? That there remain more questions than answers is but a reflection of the stage of development the matter is in. The authors are to be commended for raising the issues; they are little appreciated or discussed in academic circles.

It is interesting to speculate on the audience for whom this book seems best suited. Lawyers and professors of school law will find the case references frustrating. There are a number that have seemingly been abridged for efficiency of inclusion, yet there is no indication of what has been edited. Where italics are used to highlight paragraphs or special points, there is no indication whether the italics are the authors' or the courts' doing. Some of the cases seem ill selected as well. For instance, the first two of three cases presented to elucidate students' rights to privacy are very narrowly drawn and contain almost no generalizable principles. It is difficult to believe that these cases are the best examples that were available. The third, happily, is not so narrow, but some discussion by the authors on what a reader is justified in extrapolating from it and the other cases would have been helpful. Similarly, the purpose of including the "nondecision" of the *DeFunis* case on preferential admissions for minorities needs explicating. Doubtless the case was the best one available at manuscript time, but some discussion of what the issues were and the possible future direction suggested by the vigorous dissent would have been helpful. Simply put, too much is left up to the reader's own imagination in the book's use of these and other case transcripts. Legal scholars will also be unnerved somewhat by the authors' treating political and economic issues—for example, recruitment of students, consumerism, and unionization—as if they were primarily legal matters. In fact, they are not so much prompted by legal developments as by social and economic trends. Yet they are melded together into the legalistic orientation of the book. Nevertheless, legal scholars with sufficient depth to sort out the issues it presents and properly assess the case references probably will not be harmed by reading the book. They probably wouldn't find much new in it either.

Administrators in higher education, particularly those in student personnel administration, will find the book most useful. There are a number of selections, such as the H.E.W. student loan rules, Title IX rules, Privacy Act rules, a comprehensive summary of Title IX, and a summary of every state's policy on student majority status for residency purposes. Although each rule is clearly dated by now, they are all conveniently located here; and an idea of what each requires can be easily obtained. The checklists and guidelines on such things as recruitment and confidentiality of student records mentioned earlier would also be useful to an administrator needing one of those particular procedures.

No reader, however, will find the book useful beyond providing an introduc-

tion to the issues presented. As such, it may well be worth taking the time to read, especially if the checklists would be of interest. Even if they are not, the sections on students as consumers and organized students are worth reading and thinking about, if not, indeed, planning for. However, if the rubric that "a little knowledge is dangerous" has substance, readers are advised to be on their guard. The book is, as it is billed, an overview and does not provide an adequate knowledge and understanding base for action. Someone who has just been appointed a personnel administrator in student services in higher education and needs to get a quick look at where the upcoming snags might be would profit from it. Existing administrators wishing to assess where they are in relation to current issues might also use it to update their personal awareness of current trends. In either case the book must be only a beginning; no reader will become thoroughly informed by reading this book, alone.

THE RIGHTS OF PARENTS IN THE EDUCATION OF THEIR CHILDREN. By David Schimmel and Louis Fischer. Columbia, Maryland: The National Committee for Citizens in Education, 1977, Pp. 162. \$2.95.

*Reviewed by J. A. Camille Vautour**

Herbert Thelen once observed that the traditional teacher viewed educational innovation and change as a very large number of increasingly serious obstacles; the new devices sustain the teacher's forlorn hope of protecting and maintaining, rather than changing, the orthodoxy in the face of the most important revolutions. Offering this observation nearly fifteen years ago, it is doubtful that Professor Thelen was addressing the relatively recent upsurge in parent involvement in public education—perhaps the most far-reaching revolution to hit the establishment yet.

The Rights of Parents in the Education of Their Children presents a legal diorama of the ever-increasing involvement of parents in all phases of educational decision-making. Court action has clarified student/parent rights in such areas as discipline, religious expression, and personal appearance. Recent landmark legislation in the form of P.L. 94-142 has brought the parent into a position of coequal partnership with the school in planning the educational programs of handicapped children.

The ever-increasing role of the parent in public education has come about with such rapidity that many educators are not fully prepared to deal with the situation. The authors of *The Rights of Parents* point out that this lack of preparation is not due to negligence or malice but rather due to the fact that many of the rights of parents were defined long after present school personnel had completed formal training. This book is presented as a way to fill the gap of legal ignorance—for educators as well as for parents.

Schimmel and Fischer have adopted a highly readable style for their book and have labored successfully to minimize legalist jargon. Material is presented in clear, concise language (a goal more educators should emulate).

* Director of Pupil Services, South Windsor Public Schools, South Windsor, Connecticut.

After a basic overview of the book in chapter 1 the authors devote attention in chapters 2 through 12 to specific rights of parents ranging from discipline through special education. Chapter 2 serves as the basic foundation for ensuing chapters inasmuch as it details the elements of due process that serve as a common thread for the other "rights" discussed in the book.

Each chapter (2-12) begins with a review of the major court case(s) through which a given right has been established and/or clarified. This exposition is followed by a question and answer section designed to clarify the finer points of the court ruling or law. Finally, each chapter closes with a summary of the discussion and a brief recapitulation of the parent rights defined for that specific topic.

The two remaining chapters in this book digress from the previously described format. Chapter 13 represents a hodgepodge of diverse topics such as school finances, parent advisory councils, and non-English speaking families. These topics are discussed not in light of court action but rather in terms of various statutes of which parents should be aware.

Chapter 14 represents a plea for legal literacy for all. The argument is presented that only through awareness of the law will citizens of the school community create a climate in which each individual will be more respectful of the rights of others.

Appendixes accompanying this volume cite excerpts of significant court decisions and constitutional amendments. Of particular interest is Appendix B, in which the authors provide information on how to decipher the citations of court decisions and locate them in the appropriate law publications.

The Rights of Parents represents an important first step in articulating the legal rights of parents relative to schools. It is, however, naive to think that simple awareness of the law will foster positive home/school partnerships.

Fixation on rights may develop a sense of litigiousness rather than positive interaction. Court rulings and laws cannot serve as a panacea for many of the problems besetting education. Numerous examples can be cited where anticipated benefits of law have never been realized. The reactions of parents who have utilized the due process procedures under Massachusetts special education law (766) serve as a good example. Although the law was intended to foster positive interaction and improve the programs of handicapped children, in far too many cases the result has been an increased sense of parental alienation and substandard programming. Such realities strongly suggest the need to focus attention on cooperativeness and mutual respect in home/school interactions. Perhaps a good companion volume to the work by Schimmel and Fischer might be a compendium of model programs from around the country exemplifying positive home/school partnerships predicated upon an acceptance of clearly defined legal rights.

