

# The Journal of Law and Education

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Volume 11 | Issue 3

Article 7

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7-1982

## Book Reviews

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### Recommended Citation

(1982) "Book Reviews," *The Journal of Law and Education*: Vol. 11: Iss. 3, Article 7.

Available at: <https://scholarcommons.sc.edu/jled/vol11/iss3/7>

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## Book Reviews

PUBLIC SCHOOL LAW: TEACHERS' AND STUDENTS' RIGHTS. By Martha M. McCarthy and Nelda H. Cambron. Boston, Massachusetts: Allyn and Bacon, 1981. Pp. 336. \$18.95. (Hardback)

*Reviewed by Floyd G. Delon\**

The book, *Public School Law: Teachers' and Students' Rights*, is described on the dust cover as a "complete, easy-to-understand guide to the latest rulings impacting on teachers, students, and community relations." Even a superficial examination of the contents lends credibility to this description, at least in regard to the law pertaining to teachers and students.

Not unlike most school law books, this publication begins with an introductory section on the legal framework within which public education operates. This section is followed by the main body of the text, which is divided into two parts. As one might assume from the book's title, these two parts focus on the law affecting teachers and on the law affecting students, respectively. A brief concluding section provides a summary of the legal generalizations identified by the authors.

The comprehensiveness of the book is evidenced by a listing of the topics covered in the two major parts. Part I is composed of six chapters dealing with terms and conditions of employment, constitutional rights, dismissal, collective bargaining, and tort liability. Part II includes four chapters in which are examined school attendance, pupil classification practices, First Amendment rights, and discipline.

The authors have used the "law review" style throughout the book as contrasted to the "case book" approach employed by many writers in the field or the "encyclopedic" form used by a few others. This particular mode of presentation permits more concise coverage of the content than the "case book" method but greater depth on specific topics than the "encyclopedic" form. Each of the chapters on teachers' and students' rights ends with a list of conclusions or generalizations drawn from the authors' analysis of the pertinent case law. The

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topics throughout the book are thoroughly documented, and a brief glossary of legal terms is provided.

While the authors acknowledge that the book's content is oriented toward teachers, they also point out its value for school administrators and school board members. Other suggested uses for the book are as a guide for parents interested in the law related to their children as students and as a basic textbook for inservice or university courses.

Generally speaking, *Public School Law: Teachers' and Students' Rights* is appropriate for the suggested uses. However, there are some limitations in this regard. Its value as a textbook depends on a number of factors including teaching method, library resources, course objectives, and students served. School law professors who rely primarily on the case method of instruction will find the book inadequate as a sole text, especially where students have no access to a law library. In courses designed primarily to prepare school administrators, particularly superintendents, the book is also deficient since essential topics such as the legal aspects of school finance and property are not within its scope. On the other hand, for specialized courses dealing with the rights of school personnel and service courses enrolling teachers and building level administrations, the publication is an excellent textbook.

As a reference book for school officials, the book fulfills a definite need, but as a guide for parents with little background in either law or education, it may leave something to be desired. Nonetheless, the clarity of writing and the conciseness of the listings of conclusions do enhance the volume's usefulness for both categories of readers. The inclusion of a table of cases would have made the book a somewhat more convenient reference source.

Although the listings of conclusions are a definite strength of the publication, at the same time they represent a possible weakness. The conclusions contribute much to the readers' understanding of the significance of the many decisions reported and their application to school practice. However, the "novice legal scholars" as they were termed by the authors could possibly be misled by a few of the items, particularly if the statements were lifted from context. For example, at the end of the chapter on terms and conditions of employment the authors stated:

A teacher may be assigned or transferred to any school or grade at the board's discretion, as long as the assignment is within the teacher's certification area and not circumscribed by contract terms.

Unfortunately, in recent years boards acting on such an assumption

have had transfers or reassignments of teachers overturned when the courts found the actions to be based on constitutionally impermissible reasons. Admittedly, the authors introduced the section with "Except for certain constitutional limitations, the employment of teachers is governed by state laws" and in a subsequent chapter stated that transfer of personnel because of political activity is forbidden. Perhaps, additional cautions are needed concerning the pitfalls of viewing a given conclusion in isolation.

The authors' stated purposes for writing this book were to: (1) "provide an awareness of rights and responsibilities," (2) "motivate educators to translate basic concepts into actual practice," (3) "generate an interest in further study of the law," and (4) "alleviate fears of educators." While the reviewer feels that this publication has the potential for accomplishing these purposes, an actual determination obviously must be made by each reader on an individual basis.

In sum, although it has a few minor limitations, *Public School Law: Teachers' and Students' Rights* is a very worthwhile addition to the school law literature. This up-to-date analysis of legal rights of school personnel definitely has a place in the educator's professional library and as a textbook in preservice or inservice education law classes.

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BAKKE, DEFUNIS, AND MINORITY ADMISSION. By Allan P. Sindler. New York: Tongmen, 1978. Pp. 358. \$12.50. (Hardback)

*Reviewed by Robert M. Hendrickson\**

Graduate and professional schools' admissions policies emerged as a popular and emotional issue in the seventies. Demand for access, coupled with separate admission programs for minorities, resulted in an inevitable clash between applicants and the professional school. Public interest in both *Defunis* and *Bakke* may have been predictable, but the intensity of such interest was unprecedented in modern times.

The role of the Supreme Court in deciding the legality of selective admissions brought prominence to the controversy. The number of *amicus* briefs and the coverage by the popular press was accompanied by numerous publications in the scholarly press, thus providing the public with instant analysis of both the *Defunis* and *Bakke* decisions and their implications. Although the various reports and analy-

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ses of the admissions issues—such as those provided by the Carnegie Council and the CEEB—were insightful, they failed to illustrate the implications of *Bakke* and *Defunis* in quite the same way as Allan P. Sindler has done. With his background in policy studies and as dean of the Graduate School of Policy Studies at the University of California at Berkeley, Sindler was able to develop this unique analysis of the issue.

Sindler's book stands apart from other critical analyses of admissions issues in a number of ways. First, it is a historical analysis that traces the development of the selective admission issue. The volume describes the relationship between Allan Bakke and the University of California-Davis, develops a legal history of the controversy, highlights the posture of attorneys on both sides of the argument, and chronicles the development of the issues and *amicus* briefs as the case moved through the court system. Second, the book is a detailed policy analysis of the issues surrounding selective admission and of the views of advocates of various positions embroiled in the controversy. This policy analysis includes a discussion of admissions processes, the government's position on the *Bakke* issue, the development of the positions of key national organizations with an interest in the case, an analysis of the contributions of the Douglas dissent in *Defunis*, and the *Bakke* decision.

The first four chapters of Sindler's book deal with the developing controversy. He provides detail on the increasing demand for access to graduate and professional programs and a description of admissions policies used to screen candidates. This section lays important ground work for a full understanding of the admissions issue.

In chapter five, Sindler reveals the details of Allan Bakke's relationship with the University of California-Davis, the roles of the Admissions committee and its two evaluations of Bakke, the actions of the Medical School's admissions counselor, and the resulting suit. Parenthetically, it is interesting to note that the second evaluation of Bakke's case by Dr. George Lowrey, the head of the Davis Admissions Committee, was based heavily on Bakke's stand on selective admissions, a stand Bakke took as a result of information supplied by an admissions counselor of the Davis Medical School.

In chapters six through fourteen, Sindler continues to detail a history of the developing controversy of selective admissions. The author effectively uses the decision in *Defunis* as a benchmark to discuss the developing controversy in *Bakke*. His discussion of the Douglas dissent in *Defunis* (chapters seven/eight) in relationship to the use of standard tests, cumulative grade point average, and the

resulting predicted first-year average (PFYA) in admissions decisions is informative to the layman and the professional. In contrast to Sindler's view, however, some people interpret the Douglas dissent as a broadside attack on standardized tests and the PFYA as the chief deciding factor in admissions. When Sindler dismisses Douglas' point by noting that Defunis had a score well above those cited by Douglas, he missed the point. The reviewer hoped that Sindler would critically analyze the admissions process and the use of standardized tests, an analysis lacking in the literature. In fairness, however, Sindler's work comes closest to achieving that analysis.

Chapter nine provides a useful summary of the legal questions of equal protection under the law and the standards available to the Court in judging whether a state can give preferential treatment. By outlining the meaning of "strict scrutiny" as a standard, as opposed to the "important state interest," Sindler provides the necessary understanding of the options open to the Court. In providing the history behind the development of *amicus* briefs (chapter twelve) submitted to the Supreme Court, the author shows how split and compromise affect organizations when such a pressing controversy is before them. Of particular interest is the development of the government's brief on *Bakke*. The reader develops a sense for many of the problems that plagued the Carter administration after the *Bakke* decision. This analysis also shows the dilemma the country faced in trying to reconcile the need to increase minorities' membership in various professions with the question of equal protection under the law.

Sindler's description of the process followed by the Supreme Court, from granting *certiorari* to a decision (chapter twelve), is helpful for those not familiar with the Court proceedings. In his description of these events from an inside perspective (chapter nine), Sindler provides a clear understanding of the resulting court decision. It is especially interesting to read Sindler's analysis of the nature of oral argument before the Court. Archibald Cox, the experienced lawyer for the defense, moved swiftly through his arguments, while Colvin, Bakke's lawyer who was arguing a case for the first time before the Court, comes off as inexperienced in his arguments, apparently frustrating some of the justices.

In the concluding chapter, Sindler's detailed analysis of a very confusing decision is most useful. Not only does he explain the differences among the Powell decision, "the Brennan group," and the Stevens opinion, but he details the strengths and weaknesses of each argument. He draws attention to the disturbing aspects of the Brennan group's opinion, which could lead to preferential treatment de-

cided on the basis of the political power of various minorities.

One of the many highlights of the book is the discussion of the success rates of minorities after admission and the lack of available data to show success (chapter eight). Available data suggest a problem with minority success, for which the solution proposed by some is to match school and candidate according to ability as it relates to others in the entering class. Sindler's suggestion that professional schools focus on searching out and developing more adequately prepared minority candidates is a worthy proposal.

This book is one of the best analyses available on the issue of selective admissions. While at times feeling overwhelmed by detail, the reviewer found Sindler's book useful—a must for those interested in the legal issue of admission and minority applicants.

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CLASSROOMS IN THE CROSSFIRE. By Robert M. O'Neil. Bloomington: Indiana University Press, 1981. Pp. 242. \$15.00 (Hardback)

*Reviewed by Martha M. McCarthy\**

During the past decade there has been a concomitant increase in curriculum censorship activity, parental dissatisfaction with public school offerings, and challenges to the local school board's authority to determine courses and materials. Thus, the central theme of *Classrooms in the Crossfire*—curriculum content and First Amendment freedoms—could not be more timely. In developing this theme, Robert O'Neil skillfully describes the interests and actors involved in emotionally charged curriculum controversies. Drawing upon his legal training and his experience as an educator and administrator, O'Neil analyzes the complex issues in a clear and concise manner.

In the book's preface, O'Neil states his position as a champion of First Amendment freedoms. Nonetheless, he presents a balanced treatment of the current struggle to control the school curriculum. He describes in detail the concerns of parents, students, administrators, teachers, librarians, school board members, and the community as a whole—all interested stakeholders in determining course content and instructional materials. He also explores the legal basis for asserting a right to be educated at public expense and a right to choose alternatives to public schooling.

In addition, O'Neil describes educational and societal developments that have nurtured recent curriculum controversies. While rec-

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ognizing that the rise in censorship activity correlates to some degree with a conservative political mood, he explores other causes that are more subtle. Noting that many censorship disputes have occurred in "liberal" areas of the country, he explains that educators are more likely to take chances and thus invite controversy in settings where greater freedom exists. He also emphasizes that the dramatic expansion of the curriculum over the past few decades has made schools vulnerable to challenges that were dormant when the curriculum was more restricted.

*Classrooms in the Crossfire* is concerned mainly with legal disputes, but the cases are not discussed in the usual style found in law review articles. Relying heavily on newspaper accounts, O'Neil presents background information for each of the cases so that the reader understands why each controversy emerged and the roles played by various parties. In addition to covering the major reported cases, O'Neil also discusses many unreported or even unlitigated controversies that pose interesting legal issues. He also extends the analysis beyond actual situations to scenarios that might generate legal disputes in the future.

Volatile topics such as the teaching of evolution in public schools, instruction in sex education, and the use of taboo words in the classroom are explored in detail. O'Neil describes the delicate balancing process engaged in by courts as they weigh teachers' academic freedom, students' rights to receive information, school boards' authority to determine the curriculum, and parents' rights to direct the upbringing of their children.

O'Neil also addresses the rights of librarians and libraries which have received limited judicial attention to date. Noting that reported cases have focused on challenges to the removal of books and the screening of library acquisitions, he speculates that the judiciary may eventually have to address whether librarians have the right to refuse to circulate or even to purchase particular books. He suggests that the logical extension of current controversies is a charge of unconstitutional censorship because certain texts have not been acquired.

Many of the curriculum disputes described in *Classrooms in the Crossfire* are based on religious grounds, and a substantial portion of the book is devoted to the tension between the free exercise and establishment clauses embodied in the First Amendment's guarantee of religious freedom. Claims that public schools are establishing "irreligion" or "nonreligion" are treated as well as assertions that certain materials or subjects advance the Christian religion. But O'Neil emphasizes that curriculum concerns extend beyond religious issues, in-



volving other sensitive social and political themes as well. For example, he explores curriculum controversies involving race and sex discrimination, the holocaust, the right to privacy, and patriotism and politics.

A chapter also is devoted to public regulation of the curriculum in private schools. While supporting the need for diversity in educational options and the opportunity for experimentation in the private sector, he points out the dangers of efforts to divorce the private school curriculum from state regulation. He explores the conflict between the state's interest in assuring an adequate secular education for all children and the interests of parents and private schools in promoting particular philosophies and religious values.

*Classrooms in the Crossfire* is quite readable and does not necessitate a knowledge base in law or education. Technical language is kept to a minimum, and where used, it is clearly defined. Throughout the text O'Neil returns to case scenarios that have been introduced in earlier chapters or prior sections of chapters, thus providing a refreshing, "novel-like" theme. The lay reader will find this book interesting as well as instructive.

Although designed for a general audience, the book is thoroughly researched and each topic is addressed comprehensively. The depth of legal analysis and attention to detail offer considerable substance for the legal scholar. While one accustomed to law review articles may be frustrated by the fact that chapters do not include specific citations to cases, the notes at the end of the book (which are arranged by chapter headings) provide citations to all reported cases that are discussed in the text. The bibliographic notes also include citations to pertinent secondary sources. Researchers will find this book useful for reference purposes, but an index would have facilitated its utility as a convenient reference tool.

O'Neil's purpose is to describe in depth curriculum issues and their legal implications, without drawing conclusions or offering solutions to the problems associated with curriculum control. He succeeds admirably in achieving this purpose. However, I was disappointed that he did not write a concluding chapter, summarizing the legal principles and the cumulative impact of recent legal activity pertaining to public school curriculum content, state regulation of private schools, and students' rights to be educated or not to be educated. Although O'Neil's balanced treatment of the issues and interests is to be applauded, I would have welcomed his conclusions as to how the judiciary should respond to curriculum controversies and assess the competing interests to preserve First Amendment freedoms.

Nonetheless, the absence of such a concluding chapter does not detract from the merits of this noteworthy addition to the literature of law and education. *Classrooms in the Crossfire* is appropriate for a wide audience including parents, educators, lawyers, school policy-makers, and anyone else interested in the complex social, political, and legal issues involved in curriculum determinations. O'Neil suggests that a better understanding of current conditions and their risks to future generations may help to preserve free inquiry. This book provides an excellent vehicle to gain such an understanding.

