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## Book Reviews

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## BOOK REVIEWS

SCHOOL FINANCE AND SCHOOL IMPROVEMENT: LINKAGES FOR THE 1980s. Edited by Allan Odden and L. Dean Webb. Ballinger Publishing Company, Cambridge, Massachusetts 1983. Pp. xxi, 221.

*Reviewed by Susan Millar Wood\**

The quality of education affects all of us. We see its consequences when we hire new employees, interact with sales people in our daily lives or assist our children with their homework. Also we encounter its effects, failures, and problems when we pay local, state and federal taxes. School financing and school improvement (the subject of this book) affects all Americans, parents as well as the childless.

This volume is the fourth annual yearbook of the American Education Finance Association. Unfortunately its editors Allen Odden, and L. Dean Webb, who authored the short introduction, did not "bridge" or set into perspective each of the succeeding ten chapters. In addition, they failed to edit "educationese" or to translate it; thus, the reader who does not have an advanced degree in education misses the entire point when encountering concepts such as:

The basic assumption of the microeconomic approach to educational production function theory is that it should be possible to specify a set of relationships between mixes of instructional process inputs and learning outputs that can be used to develop optimal strategies for investing in amounts of particular types of instructional processes. (p. 128)

Could we have that one more time in English?

At the end of each chapter are references, which are detailed and thorough. Especially noteworthy is Michael Cohen's bibliography which appends his chapter entitled "Instructional, Management, Bibliography and Social Conditions in Effective Schools." However, the individual authors do not document the text with footnotes. The omission of footnotes prevents finding the source of or further information on a specific statement.

"State Involvement in Local Educational Quality," Chapter 3, written by Milbrey Wallin McLaughlin, will be of specific interest to public

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\* Law Librarian, Supreme Court Library, Syracuse, New York.

employees. McLaughlin discusses the Florida system of stimulating competition between regions and districts by funding contests and prizes for academic excellence on the state and local level. Another innovation is the annual school report writing contest, which compares written reports submitted by school principals and their citizen-advisory committee members. Other states have developed similar schemes to evaluate publicly funded schools and improve the quality of education. It would be splendid if this type of stimulation was carried over to other state agencies or public institutions.

Jane David in her article, "Second Improvement and Programs for Special Populations: Finance and Governance Linkage" advocates school-based policies as a method of channeling programs for special populations. She stresses that accountability is diminished under this approach. But she fails to resolve the resulting dilemma; better programs, if locally planned and executed, have less accountability, versus the risk that special need students will be overlooked by programs with more accountability. We must be able to ascertain that funds are spent for their intended purposes without, at the same, time interfering with the best methods to attack and solve the problem.

"Linking Technology Use to School Improvement: Implications for Research Policy and Practice." by Professor Stanley Pogrow should be assigned reading for all education doctoral candidates. He enumerates topics and subjects that need further study or that have never been tested or whose results are uncertain. Many of the questions he raises in this chapter must be answered before more and more tax dollars are spent on computers and software for the classroom. If computer based education is, in fact, the better educational tool (as he suggests) than the classroom teacher, our focus should be switched to more technical devices and for fewer teachers relying on audio techniques.

As with any collection of essays, the academic and literary merit, the length and style of each chapter varies. The other chapters in this Annual are: "A New School Finance for A New Era of Fiscal Constraint" by Michael W. Kirst; "School Improvement and Fiscal Retrenchment: How to Improve Education When Resources Are Declining" by Lorraine M. Donnell; "Focusing Local Resources on School Improvement" by George W. Bailey; "Teacher Quality" with segments by Phillip C. Schlechty and Victor S. Vance, by Mary Hatwood Futrell and by James Gordon Ward; Resource Allocation and Achievement: A Classroom Analysis" by Richard A. Rossmiller, and "Quantitative Studies of Effective Schools: What Have We Learned?" by Richard J. Murnane. In future yearbooks, certain stylistic changes are in order. The biographies of the contributors, which presently are in the extreme end of the volume

after the index, should be moved up, either to the very front, or placed on the first pages of the contributor's article. Presently, only the most diligent person will locate this biographical information, which tells much about the article's orientation and thrust.

This yearbook contains many ideas which deserve the attention of legislators, educators and the general public. The future of successful public education is not as bleak as one might assume from listening to and reading the media. There is much that can be done. The reader senses optimism for the system. Future volumes of this annual will be more useful if the above mentioned improvements are instituted.

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SCHOOL BOARDS AND THE OPEN MEETINGS LAW, by J. Stephen Kirby, Kentucky School Boards Association (1984). Pp. 48.

*Reviewed by Ronald W. Eades\**

It was not many years ago that the public decided that state and federal agencies should conduct their business in open settings. Probably as a result of some distrust of politicians and government itself, citizens wanted to know precisely what the elected and appointed officials were doing.<sup>1</sup> This led to a wave of open meetings laws or sunshine laws which were intended to open all operations of government to the scrutiny of the public at large.<sup>2</sup> However, citizens also demand a certain degree of privacy in their lives. It thus became necessary to indicate that some information or actions by government could not be released to the public.<sup>3</sup> Therein, lies the conflict. Government officials are required by some statutes to conduct their business in public and yet are constrained by other statutes to keep certain information confidential. Trying to walk the narrow corridor of this maze between what must be kept open and what must be kept confidential can be difficult.

Many states following the federal government's lead, have enacted sunshine laws or open meetings laws that require that state business be open to public scrutiny. In order to protect individual rights of privacy, most states also provide that certain types of information must be kept confidential. The operation of public education systems may be one of the

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<sup>1</sup> This concern with openness of government may even have Constitutional dimensions. See *New York Times v. United States*, 403 U.S. 713 (1971) (The "Pentagon Papers" Case).

<sup>2</sup> Freedom of Information Act, 5 U.S.C. § 552 (1982).

<sup>3</sup> Privacy Act of 1974, 5 U.S.C. § 552a (1982).

best examples of the difficulty of this conflict. School boards set education policy and enter into contracts for buildings and services. These activities are probably "public." Much of a school board's work, however, involves personnel contracts for teachers and the details of the progress of individual students. That information appears to be "private." When education policy affects individual students, that information produces the conflict.

The Commonwealth of Kentucky has passed an open meetings law which clearly includes the actions of school boards.<sup>4</sup> This law forces the orderly conduct of business, requires that most meetings be conducted openly, but protects individual rights of privacy. The Kentucky School Board Association, with a praiseworthy objective in mind, produced a little, paperback monograph,<sup>5</sup> which attempts to explain the current state of the open meetings law in Kentucky.

The book intends to be a "reference and a guide to the law,"<sup>6</sup> to be used by school board members, administrators, and attorneys. It appears to adequately cite most, if not all, of the legal material on the subject.<sup>7</sup> It also provides a discussion of the important points of the material. If there is a flaw, it is that the discussion could be longer and more detailed.

The absence of a lengthy discussion could be critical. This booklet gives a basic outline of what a "Meeting"<sup>8</sup> is and how it should be conducted.<sup>9</sup> Many of those requirements are set forth in the statute and must be followed. It also specifies some of the matters that should be conducted in private, and points out problem areas.<sup>10</sup> A further discussion of the kinds of things that must be conducted in private, however, would be useful. The statute basically requires that meetings be open unless some other law (federal or state) requires that they be closed. With a continual growth of federal and state law in the area of privacy, extreme care should be used to assure this section is not violated. More discussion on the topic of privacy, for example, would have been of extreme benefit to most administrators.

For the school board attorney, the book has some obvious strengths and, against, a weakness. The tables of attorney general's opinions, statutes and cases will help reassure even the most experienced attorney in this area that all material has been checked. The brevity of the discussion,

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<sup>4</sup> J. Kirby, *School Boards and the Open Meetings Law*, 1 (1984). (Hereinafter cited as Kirby).

<sup>5</sup> The book is soft cover. It has approximately 50 pages including the preface, tables and text.

<sup>6</sup> Kirby, Preface.

<sup>7</sup> Id. at 44-47.

<sup>8</sup> Id. at 104.

<sup>9</sup> Id. at 5-32.

<sup>10</sup> Id. at 18-27.

however, distracts from its use. The book deals primarily with the obvious, important issues. For the difficult or peculiar problem, however, the attorney will have to look elsewhere. For the attorney handling a first school board issue, the book does provide an overview. However, that attorney will also have to look elsewhere for details. The book entices the reader with the information it imparts, but leaves him/her knowing there is more information available.

Finally, it would also be interesting to know what the author thinks of the conflicts that open meeting laws and privacy laws create. The Association obviously has had some experience in dealing with these problems, and the complex issues that these laws are creating. A detailed analysis, together with their view of needed changes, would be an excellent publication.

In summary, the short booklet has a useful role but care must be exercised in its use. It provides a nice overview of general problems encountered, gives some good examples of what to expect, and collects much of the legal material. However, it is not an in-depth research tool. The use of the book could be most helpful if it is recognized that the use is limited. People should use it with care as a quick overview of the material and a "bibliography" of legal resources. It gives an overview of the issues, together with sufficient material to highlight some of the problem areas. This book alone will not, however, give the reader enough information to make all open meetings or privacy decisions. School board attorneys will be needed to advise the board so that it fully complies with the law. If those caveats are kept in mind, the little book could be quite helpful.

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E. Edmund Reutter, Jr., *THE LAW OF PUBLIC EDUCATION*, Third Edition, Mineola, N.Y.: Foundation Press, Inc., 1985, Pp. 929, \$29.50.

Kern Alexander & M. David Alexander, *AMERICAN PUBLIC SCHOOL LAW*, Second Edition, St. Paul, Minn.: West Publishing Co., 1985, Pp. 817, \$33.95.

E. Edmund Reutter and Kern Alexander have high name recognition value because of their publications in school law,<sup>1</sup> generally, and particularly because of their school law textbooks. These textbooks have a rich tradition associated with them, and this tradition is enhanced with new 1985 editions of their respective school law textbooks. E. Edmund

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<sup>1</sup> Some people distinguish between school law and educational law; but in this review the phrase the school law is used generically to cover either term.

Reutter has just published his third edition of *The Law of Public Education*,<sup>2</sup> published by Foundation Press, and Kern Alexander has published with his brother, David Alexander, a professor at Virginia Tech University, *American Public School Law*.<sup>3</sup> These 1985 editions have a format and comprehensiveness with which most scholars in the school law area are familiar. These books are significant in their own right, and their bloodlines give them a particular significance which newer entries do not enjoy. The 1985 editions, when compared with their predecessors, provide a perspective on the historical continuity and change which has taken place in school law.

*The Law of Public Education*, 3rd edition, traces its genealogy directly back to probably the first significant school law textbook published, *The Law and Public Education*.<sup>4</sup> Foundation Press published this book in 1941 and a second edition in 1959. "And" was changed to "of" when the first edition of the Reutter and Hamilton text, *The Law of Public Education*,<sup>5</sup> appeared in 1970. Reutter and Hamilton coauthored the second edition in 1976, and by this third edition Reutter is the sole author. In comparing the five textbooks spanning nearly half a century between 1941 and 1985 one is struck by the increased attention given to federal constitutional law and the steady increase in the length of the volumes. Of the thirteen chapters in the 1941 edition, one separate chapter on constitutional restrictions on public education was all that was devoted to the federal constitution. Out of the 566 pages covering these thirteen chapters, federal constitutional considerations could be covered in roughly forty pages. Of these forty pages, state constitutions also received some attention. By the time of the 1985 edition the federal constitutional material permeates many of the chapters in the book. Between the 1941 and 1959 editions, this chapter on constitutional restrictions on public education was dropped and much of the material placed into a new first chapter describing the sources and operation of the law as it affects public education. New chapters were added on separation of church and state and school elections. In the 1970 edition of the Reutter and Hamilton book, *The Law of Public Education*, which was explicitly linked in the preface to its predecessor volume by Hamilton and Mort, the fifteen chapters of the 1959 edition were reformulated into fourteen chapters. The first two chapters were rolled into one chapter on the legal framework of education and the one chapter on liability was broken into two separate chapters,

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<sup>2</sup> E. REUTTER, *THE LAW OF PUBLIC EDUCATION* (3d ed. 1985).

<sup>3</sup> K. ALEXANDER & D. ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* (2d ed. 1985).

<sup>4</sup> R. HAMILTON & P. MORT, *THE LAW AND PUBLIC EDUCATION* (1941).

<sup>5</sup> E. REUTTER & R. HAMILTON, *THE LAW OF PUBLIC EDUCATION* (1970).

one dealing with tort liability and a second dealing with contractual liability. The three chapters on teachers were reorganized, a chapter on desegregation added, a chapter on school elections was enlarged to include the material on school board procedures, and the final chapter of the old Hamilton and Mort book entitled "The Way Ahead" was dropped. This fourteen-chapter structure remains basically unchanged through the 1976 and 1985 editions. The length of the books increased from 642 pages in the first edition to 729 pages in the 1976 edition to 902 pages in the 1985 edition.

The genealogy of Kern Alexander's involvement in school law textbooks is considerably more recent. He was coauthor of the 1969 book *Public School Law*<sup>6</sup> and the sole author of the 1980 book *School Law*.<sup>7</sup> The 1985 edition which he coauthors with his brother, David, is entitled *American Public School Law* and is specifically labeled the second edition. It is published by West Publishing Company, but the appearance has changed markedly from the classical brown and gold leaf trim of the 1969 and 1980 volumes, characteristic of the West law school textbooks, to a dark blue color. The significance of this change in appearance is not elaborated in the preface. It "is designed for graduate students in education or law school students who desire a comprehensive view of the law that governs the state school systems of America." Its relationship with the other school law texts in the West Publishing Company stable is not explained, although the change suggests a different marketing strategy. The 1985 edition of *American Public School Law* has expanded to eighteen chapters from the fourteen in the 1980 volume, breaking a long chapter on teachers into four more focused chapters and splitting a chapter on compulsory education and curriculum into two separate chapters. There is also a 234-page instructor's manual which accompanies this second edition.

The format of the 1985 editions of these school law texts, because of their pedigree, is quite similar to one another and probably well-known to most people familiar with the school law area. Both volumes provide a narrative, substantive overview of a particular legal topic and supplement this narrative with short, tightly-edited cases which elaborate many points made in the narrative. These 1985 editions by Reutter and by Alexander and Alexander continue to be substantial, well researched, and comprehensive, and should probably be two of the biggest selling books in the school law field. Their comprehensiveness is attested to both by

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<sup>6</sup> K. ALEXANDER, R. CORNS & W. MCCANN, *PUBLIC SCHOOL LAW: CASES AND MATERIALS* (1969).

<sup>7</sup> K. ALEXANDER, *SCHOOL LAW* (1980).



their length (783 pages plus index and appendices—selected constitutional provisions, selected federal statutes, and glossary of terms—for Alexander and Alexander and 902 pages plus index and appendices—principal provisions of U.S. Constitution, principal federal statutory provisions, and glossary—for Reutter) and topic coverage. For example, Reutter continues the fourteen-chapter format that is used in all three editions. This begins with a legal introduction chapter and continues through chapters that deal with the church and state, state level entities, local school boards, financing education, use of school money and property, tort liability, contract liability, three chapters on teacher employment, including such things as certification, contracts, terms and conditions of employment and discharge and retirement, student personnel, race-state education relationships, and school board procedures and school elections.

Alexander and Alexander have a similar, comprehensive overview of school law subjects, although the chapters are broken into somewhat more specific topics. The first and second chapters deal, respectively, with an overview of the legal system and a historical perspective, while the third and fourth chapters deal with the federal role and state governance of public schools. There is a chapter on church-state relations, a separate chapter on school attendance, and an individual chapter given to the instructional program. Student rights is covered in one chapter and rights of handicapped children in another. Desegregation and torts are subjects of separate chapters and four chapters deal with various aspects of teacher employment, including such things as terms and conditions of teacher employment, teacher freedoms, teacher dismissal, and employment discrimination. The last three chapters deal with collective bargaining, finance, and property. These books set a generally high standard for comprehensiveness and thoroughness of research, with hundreds of cases cited in the footnotes to support and elaborate many of the points made in the narrative.

For example, Reutter in the preface to his third edition says that there are approximately 2,000 new cases cited either in the footnotes or in the notes following the cases in this 1985 edition over the 1979 supplement. Both books are comprehensive, but Reutter, in particular, seems to pride himself on the number of citations included throughout the narrative and notes. In this regard the Reutter book is like many of the hornbooks available in substantive areas of law (Prosser on *Torts*, for example) and is a valuable resource to the school law scholar.

Both of these books are intended for use in school law classes, probably primarily for graduate students in educational administration and some law school students. The suitability of these two books for this graduate-level instruction is an important issue, but a difficult one to

approach because of the quite different background and perspective which different instructors will bring to the school law course. Some instructors will emphasize the substantive, black-letter law side of school law while others will emphasize the process, the interplay between facts and legal standards. There are also differences between instructors about the extent to which they will supplement a text with additional readings. Any national school law textbook will have a tendency to homogenize school law standards, and if particular state law perspectives are to be protected they will need to be provided by the instructors.

This reviewer's bias is toward the cases, toward understanding the way the legal process works. Substantive law is learned, not by memorizing a commentator's account of the black-letter law but by understanding the holdings of a number of related cases. Commentary is important primarily to put these cases into context. From this reviewer's perspective one of the most important outcomes of a school law course is that students understand the dynamics that occur between the facts of a dispute and the legal standard(s) that might apply to that particular dispute. Students need to be able to read cases, understanding the holdings of cases, and grapple with a line of cases which deal with a single area of the law but have somewhat different facts embedded in the disputes. These cases need to be organized in such a way that they highlight the central underlying policy questions which are fundamental to understanding the decisions which are rendered. Students seem to respond best when there is a type of Socratic dialogue in the classroom, providing hypothetical problems which force students to analyze the implications of certain decisions rather than memorize black-letter law.

It would be instructive to compare these two 1985 editions by focusing in more detail upon a common chapter. Because the reviewer has systematically researched the torts area over the last five years, the torts chapters in these two books will be examined.<sup>8</sup> Chapter 7 of the Reutter book, "Torts," begins with a brief one-paragraph introduction to torts and then moves into the doctrine of non-liability. Non-liability is a major organizing theme in this chapter as the first section is followed by the areas which are exceptions to non-liability, then proceeds through a brief description of liability insurance, describes the abrogation of the doctrine of non-liability by the courts, by the legislature, and by the Supreme Court, and concludes with a discussion of the reestablishment of non-liability. At this point there is a section on the liability of school

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<sup>8</sup> See, e.g., P. Thurston, *Torts* chapters, *THE YEARBOOK OF SCHOOL LAW* (NOLPE, P. Piele, ed. 1980-1984); Thurston, Ory, Mayberry & Braskamp, *Legal and Professional Standards In Program Evaluation*, 6 EDUC. EVAL. & POLICY ANAL. 15 (1984).

board members and an extensive description of the liability of employed personnel, describing cases in the areas of negligence and adequacy of supervision, foreseeability, athletics and dangerous activities, administrative responsibilities off premises, and condition of premises responsibilities. Following the narrative there are eight edited cases, with each case followed by notes which amplify certain points in the case and provide references to other related cases on similar points.

The ordering and presentation of the material in this chapter does not optimally present the conceptual principles basic to torts. The organization of the chapter could be improved if the material on non-liability were moved later in the chapter and a clear delineation of liability standards placed earlier. There is too little distinction between intentional torts and negligence, and even the description of the liability does not place sufficient emphasis on the legal articulation of the standard of negligence. It would be helpful for a student to see the elements of the *prima facie* case clearly stated along with the available affirmative defenses. Then students could see how this standard is applied in a variety of situations in the school context. In the present format the student might unfortunately be left placing more emphasis on the context of the injury, whether it was involved with athletics or dangerous activities or something related to the condition of the premises, rather than an analysis being made about the duty of due care or the causal relationship between the alleged improper action of an employee and the injury. Constitutional torts are also introduced in the text where negligence is discussed, thereby making it hard for the students to distinguish between the two quite different causes of action. It is easier to teach these when they are treated separately and students can understand that although they are both labeled torts, common law negligence and constitutional torts draw from quite different sources and are meant to protect quite different interests and apply different standards.

The torts chapter in Alexander and Alexander begins with a general introduction to torts and distinguishes between intentional tort, strict liability and negligence. (The phrase intentional interference is used interchangeably with intentional tort. It would have been preferable if the authors would have stayed with the more common phrase of intentional tort to describe this general area of tort law as distinguished from the specific intentional tort of intentional interference with a contract.) Next there is a description of the basic elements of the *prima facie* case of negligence and the defenses that are available for negligence. Eight short edited cases follow which highlight many of the negligence issues raised, such as supervision, intervening cause, contributory negligence, and more.

Notes follow the cases which elaborate on some of the important legal principles and describe related facts from other cases decided in other states.

The next major section deals with educational malpractice. There is an explanation of the concept of educational malpractice and then one edited case, *Donahue v. Copiague Union Free School District*, following it. (This reviewer prefers the *Hunter v. Board of Education* case or the *Hoffman* case for presenting educational malpractice because they present more troubling types of student injuries. *Hunter* is used by Reutter, although his editing of the *Hunter* case is troublesome because he excludes the very important distinction that is made in the case between potential liability of public-educators for injuries caused by their intentional torts from their non-liability for educational malpractice resulting from injuries that are caused by their negligence.) The next major section of the book deals with governmental immunity, with one case where sovereign immunity is abolished; and this is followed by a section on proprietary functions and two edited cases. Following is a brief section on defamation with a very brief overview of the defamation doctrine with particular attention given to the privilege defense, accompanied by two cases elaborating some of the principles of defamation. (A short section on pupil records and information seems misplaced between the defamation section and the two cases elaborating upon the privilege defense.) Finally the chapter concludes on constitutional torts with a brief introduction, a good historical overview, and three edited cases with a few notes following only the last case.

The instructor's guide for the torts chapter begins with a brief overview of the chapter and provides a half page discussion guide for each case. There is a short description of each case and then several "points to raise" highlighted in the book. The guide chapter then provides 27 true-false questions, four "you be the judge hypotheticals" which provide a fact situation and a question about whether or not liability would exist for the defendant, and finally there are ten discussion or essay questions. The chapter is weakest in the constitutional torts area. *Wood v. Strickland* is excerpted, but inadequate explanation is made about subsequent changes in the good faith immunity standards. (Reutter does identify this change in good faith immunity.) The *Monell v. Department of Social Services* case is also excerpted, but is probably not as important for the principles articulated as *Owen v. City of Independence*. *Carey v. Piphus*, which is also excerpted, is important but does not seem to be completely understood. Two of the true-false questions which deal with the damages that are available against individual school board

members are incorrect. For example, question 26 asks: "True or False—punitive damages are the only damage claims allowed under 42 U.S. Code Section 1983." The guide says that this should be answered true and references the instructor to the *Carey* case. This is a misreading of the *Carey* case because it speaks only about compensatory damages as distinguished from nominal damages. The issue of punitive damages remained for a later decision and, in fact, has been allowed in constitutional damage cases against individual defendants.<sup>9</sup>

On the whole though, the structure, format, and readings in the torts chapter by Alexander and Alexander and the accompanying material in the instructor's guide provide an easier context for students to understand the relatively complicated torts area. The differences in approach are not as marked in other chapters, particularly those that are based on federal constitutional principles.

The 1985 editions of the school law textbooks by Alexander and Alexander and Reutter are both solid, released by leading publishing houses. If one were looking for a comprehensive hornbook in school law, this reviewer would recommend that the person buy Reutter's *The Law of Public Education* whereas, if one were recommending a textbook which could be used in a school law course, the reviewer would recommend that a person choose Alexander and Alexander's *American Public School Law*, 2nd edition.

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<sup>9</sup> Smith v. Wade, \_\_\_\_ U.S. \_\_\_\_, 103 S.Ct. 1625 (1983). Also see Frels, *Punitive Damages In Civil Rights Action*, SCHOOL LAW UPDATE 1985 at 54.