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Teachers and the Law

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Review

Teachers and the Law

Teachers and the Law by Louis Fischer, David Schimmel, Cynthia Kelly (New York: Longman Inc., 1981) 306 pp. appendixes, glossary of terms, selected bibliography, table of cases, index. \$25.00 cloth, \$12.50 paper.

With the goal of promoting legal literacy among teachers, Fischer and his colleagues have pooled their legal knowledge and writing skills to produce a new and successful entry into the growing field of books on school law. In the Preface the authors write:

This book is about teachers and the law that affects them, laws established by state and federal statutes, constitutions and court decisions. This law will have little significance, however, unless educators know about it and are willing to make the effort to see that it is carried out.

This book clearly will help educators learn about the law affecting them in their professional life and in their relationship with school boards, administrators and students.

Part I focuses on the legal aspects of teaching and contains information from teacher contracts to copyright law. Each of the seven chapters is a model of tight organization beginning with a list of questions to be answered in the chapter and a brief overview of the contents followed by a question and answer format of legal issues and concluding with a chapter summary. Interspersed in the chapters are case studies from actual court cases illustrating the major legal issues under consideration. To an interested reader, the case studies add a dimension of authenticity to the text material. The substantive content of each chapter is well documented with case and statutory citations.

The focus of Part II is on teachers' and students' rights. This part comprises about two-thirds of the remaining text material. Eleven chapters, tightly organized in the same fashion as those in Part I, highlight a variety of legal issues confronting teachers. This part contains what I would call the "stuff" of daily school life; for example, personal freedoms, due process, racial and sexual discrimination, the rights of handicapped and non-English-speaking students, student records and compulsory schooling and parents' rights. These are the issues making headlines today and are a constant reminder of the interface of the public schools with the broader environment of law, tradition, prejudices and personal preferences in a pluralistic society.

The authors make extensive use of appendixes and other supplementary information to provide a basic reference for readers whose intellectual curiosity has been stimulated by the contents of the book. The appendixes contain the standard information; for example, selected provisions of the U.S. Constitution and a discussion of education and the American legal system. But, I found Appendix C, Major Civil Rights Laws Affecting Schools, to be particularly well done and an important addition to book. Appendix D contains several charts showing state by state standards for public education including attendance requirements, curriculum, extracurricular activities, pupil records, inservice training and personnel policies. While such lists may provide comparative information from the states on various education standards, the lists are static and will change over time. It was noted that the information was from a 1978 publication of the National Institute of Education.

The book concludes with a short list of other legal resources for teachers. I was surprised to see no mention of the important work which the American Bar Association has done over the past few years with its Law and Education program. A very good glossary of terms is provided for reference along with a selected bibliography and a table of cases.

The strengths of the book are many and suggest that the book will be an important addition to the field of school law. The book is written and organized into an easy reading format. The use of case studies provides enough diversion from the structured format of each chapter. The authors have avoided the use of legalese without undue simplicity and without a loss of substance. The selection of the content reflect the real world of public education and include many issues new to the field such as copy-right law, student records and educational malpractice.

There were some aspects of the book, however, which caused this reviewer some problems. As in any school law text, particularly those written for the layperson, there is a tendency toward overgeneralization of some issues. Although the authors recognized the complex and dynamic nature of the law, they seemed to overreach in some instances when drawing conclusions from state statutes or law cases. For example, the authors cited Texas statutes for an example of a tenure law (pp. 31-32). While it is correct that Texas provides permissive legislation allowing probationary and continuing contracts [Tex. Education Code Ann. tit. 2, §13.06 (Vernon 1972)], the fact is that only about 15-20 percent of the more than 1000 school districts have adopted such contracts. The vast majority of districts use term employment contracts. In the section on due process for students (pp. 198-203), the authors suggest that students should have the right to cross-examine witnesses based upon various court rulings relying on the guidelines from *Dixon v. Alabama State Board of Education*, 294 F. 2d. 150 (5th. Cir. 1961). In the very next section, however, the authors beg the question, Do courts always allow the cross-examination of witnesses? The response is that "[t] here are conflicting cases on the right to confront and cross-examine accusing witnesses." Perhaps, this illustrates the ambiguity of the law; but, it certainly creates some confusion for the reader. The authors could have placed the caveat in the initial section to have avoided the possible confusion without ruining their argument.

In discussing the issue of whether students must salute the flag (pp. 148-149), the authors respond, "No, they do not have to salute the flag if they have a *genuine religious objection* to such an act" (emphasis added). They based their assessment on the landmark case, *West Virginia State Board of Education v. Barnett*, 319 U.S. 624 (1943). I would argue that the major issue was not religious, per se, although it was an alleged violation of religious belief which precipitated the case. In quoting Mr. Justice Jackson in the majority opinion, "the sole conflict is between authority [of the state] and rights of the individual. He stated, "Nor does the issue as we see it turn on one's possession of particular religious views or *the sincerity with which they are held* (emphasis added). Thus, I would disagree with the authors by responding that the issue of a genuine religious objection to a required flag salute is irrelevant to the primary issue of the authority of the state vis a vis the rights of the individual.

These observations are not intended to demean the value of the book, but rather to reflect honest differences

in interpretation or style. Such is usually the case with legal writing and reflects the nature of law and the legal process. Although a trivial issue, I did object to the authors use of the term liberal on three occasions to describe certain California courts. I typically find nothing gained by describing courts in such loaded terms as liberal or conservative. Finally, I was surprised that the authors failed to mention the problem of sexual harassment in the sections on sexual discrimination. This growing problem should be examined in the context of such a book.

I believe the authors have accomplished their goal of promoting legal literacy for public school teachers. This book provides the information for teachers to understand better the complexities of the law and, as a result, to stay out of court by practicing preventive law. *Teachers and the Law* will be a valuable addition to the professional collection of teachers, administrators, school board members and other laypersons interested in public school law.

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Review

Promoting Moral Growth: From Piaget to Kohlberg

Richard H. Hersh, Diana P. Paolitto and Joseph Reimer.
Promoting Moral Growth: From Piaget to Kohlberg. New York: Longman, 1979.

The prime goal of *Promoting Moral Growth* is to facilitate educators' comprehension of the theory and implications of moral issues within school settings. The approach presented in this volume has its roots in the writings of John Dewey, the stage development work of Jean Piaget, and the conceptual synthesis and research of Lawrence Kohlberg.

As a Harvard psychologist, Kohlberg for the past 25 years has been expanding, refining, and honing the work of Dewey and Piaget. He perceives that humans function at different stages of moral maturity and that understanding how and why individuals respond as they do is vital to education.

Values such as fairness, justice, rights, equality, honesty, responsibility, human dignity, truthfulness and consideration for others whether they exist in the classroom or in the general society are considered to be moral issues. The authors of this volume observe the importance of the school's role in the basic orientation of children and young adults.

Teachers are instrumental in the transmission of values. As human beings they cannot be value neutral. Indeed, arguing for value neutrality is itself a value position. Teachers, by their pedagogical choices and their modeling behavior, are of necessity moral educators, regardless of the subject matter they teach. Thus, when the question is raised, "Should schools engage in values and moral education?" we have no choice but to answer that schools are necessarily institutions of significant moral enterprise.

Moral education should not be confused with simple value clarification. The authors believe that values clarification focuses on the question "What is good?" via assisting teachers and students with strategies for becoming more fully aware of the values of others, what is to be valued, and their own personal values. However, it is noted that the values clarification model lacks the ability to help teachers and students cope with value conflicts. The viewpoint that all values are relative and of equal value is rejected in this study.

The process forwarded by Kohlberg and examined in this volume represents a way of understanding how children and adults think about the critical issues of morality. The teaching process described is based on the belief that children need the opportunity to examine complex decision-making situations; be permitted to formulate a position specifying their reasons for endorsing that position; and subsequently comparing their position to the rationale and reasoning espoused by others regarding the same problem.