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A Review of The Law and Teacher Employment

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BOOK REVIEW

THE LAW AND TEACHER EMPLOYMENT.

By Gloria Jean Thomas, David J. Sperry, and F. Del Wasden.
St. Paul: West Publishing Co. 1991. Pp. vi, 320.

*Reviewed by Douglas F. Bates, Ph.D., J.D.**

Several years ago, humorist James Thurber wrote a "fable for our time," in which he told of a seahorse that set out to see the world and ended up taking a shortcut through a shark's mouth, ending both the journey and the story. Thurber's moral was that if you are not sure where you are going, you are liable to end up somewhere else.

When I first entered law school I often felt like Thurber's seahorse. The "Socratic" teaching method, sometimes expertly applied but often not, left students struggling to understand what the point was supposed to be in the pages and pages of caselaw that were reviewed each night and the detailed and sometimes embarrassing questioning that followed the next day. Since graduating, I have often spoken to attorneys who said that they did not truly understand certain points of law until they took the Bar Review course where the answers to the Socratic questions were finally laid out in an understandable fashion.

One of the greatest strengths of *The Law and Teacher Employment* is that the information is presented within a conceptual framework that makes it possible for those who are not well-versed in school law to understand. A list of legal principles is found towards the beginning of each chapter, and each principle is addressed in turn.

The clear statement of each legal principle in turn provides a framework upon which the reader can build to organize and understand the information which follows. In essence, the reader is given a road map, eliminating the frantic search for meaning that makes life so difficult for beginning law students.

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The principles are then explained through the use of excerpts from significant cases which illustrate the application of each principle, together with additional explanatory material. Each chapter is therefore organized as follows:

1. An introduction to the historical background of the legal issues within the chapter topic;
2. A list of legal principles;
3. A discussion of the case law governing decisions about each principle;
4. A summary of the issue, including trends in the development of the topic; and
5. Questions relating to the topic, with responses based on the case law discussion.¹

Some may complain that this approach eliminates a crucial step in teaching people to “think like lawyers.” But this book is not intended to teach people to think like lawyers; its target audience is primarily educators. I assume that the authors would be perfectly satisfied if the readers were able, after completing the book, to continue thinking like educators, but with a somewhat heightened understanding of the considerations that law imposes upon certain aspects of education. If properly taught, that understanding should help eliminate the fear of law that has cast such a dark and inhibiting shadow over much good practice in education.

The book begins, as employment relationships traditionally have, with contracts, then moves on to assignments and reassignments, extra duties, demotions, discharge, leaves of absence, academic freedom, personal freedoms, labor relations, and tort liability. In the back of the book one finds excerpts from the U.S. Constitution and federal statutes, a list of case references, a bibliography, a short glossary, and an index. As noted in the title, the book is not intended as a text for a general introductory course in school law. There is no discussion of truancy, graduation prayer, funding formulas, or

1. GLORIA JEAN THOMAS ET AL., *THE LAW AND TEACHER EMPLOYMENT* v (1991).

property taxes, but there is a great deal of solid information about employment issues.

The authors have taken great pains to carefully explain each of the legal principles which they have selected, and each point is carefully documented with caselaw or commentary. Case citations within the text itself provide only the title and the date, however; the court rendering the decision is not cited, making it necessary to turn to the back of the chapter or the back of the book to obtain a complete citation.

Arguments about citations cannot be won. Some criticize complete citations within the text because they break the flow of the idea. If one is reading solely for the purpose of learning the author's point of view, that approach has merit, and in this case the authors have clearly come down on the side of having a readable text. If, however, one also wishes to make judgments concerning the weight of authority which should be afforded a given concept, then the more information in the text the better, and being forced to turn back to a bibliography can become quite burdensome.

Even if complete citations had been given, however, the authors do not provide any independent discussion on precedent, or the significance of decisions by different courts or different jurisdictions. Unless that information has been provided in an earlier course or some other context, a reader may be led to believe that a principle enunciated by an intermediate state court decision in Utah is equivalent to a decision rendered by the United States Supreme Court. That result is all the more to be expected because there is no differentiation in the form of reference in the text itself, regardless of the court, the citation gives only name and date.

If the book is to be issued again in a later edition one other change in the reference sections would be helpful. If, for example, I were to be searching for information relating to *Tinker v. Des Moines Independent Community School District*, I could find the case citation in the appendix or following a chapter in which the case is discussed, but I could not move from the citation back into the text. It would be necessary to use the index or table of contents to find a subject matter reference applicable to *Tinker*; then, after turning to that part of the book, to search the text until I found the case and related discussion. It would be helpful if the authors would expand their reference sections by listing the page numbers in the text where each case, book, or article is cited.

It would also be helpful if the authors would update their citations. It cannot be helped that a flurry of important legislation was passed by Congress in the waning days of the Bush administration, too late for consideration in this text. But most of the cited cases are more than ten years old, a long time for a field as volatile as school law. The discussion of homosexual teachers, for example, includes one case from 1969, two from 1973, two from 1977, one from 1984, and one from 1986, hardly "current cases" as claimed in the text.² It may well be that the major conclusions would not change if more recent material were utilized, but those purchasing the book to serve as a "reference manual for those involved in the legal dimensions of the public schools, including teachers, administrators, teacher union/association leaders, school board members, and attorneys representing school boards"³ would be ill-advised to rely wholeheartedly on principles or legal theories based upon older cases when attempting to discern the current state of the law in such a dynamic area. As Sigmund Freud is reported to have written, "Theory is good—but it doesn't prevent things from being true." One need not study much law to find that legal theories change, and that while knowing what "ought to be" is good, knowing what "is" is sometimes better.

Despite what I believe to be an over reliance on older cases, the information given in the text appears to be quite accurate—that is, I tend to have the same views as those expressed by the authors. I also commend them for their selection of topics. I wish that they had gone a little farther, however, and addressed the differences between administrative and court proceedings, standards of proof applicable to different settings, and the relative significance of administrative, statutory, and constitutional law. Some discussion of the relationships which exist between federal and state laws and rules may also have been helpful. But then if I continued with my wish list I would soon be back to a general text in school law, something that this book, again, is not. The authors staked out a narrow portion of the total field, plowed it and planted, and the reader will not be disappointed in the harvest.

2. *Id.* at 188.

3. *Id.* at v.