

Fall 3-2-2001

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Recommended Citation

Suzanne R. Painter, *Improving the Teachings of School Law: A Call for Dialogue*, 2001 BYU Educ. & L.J. 213 (2001).

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IMPROVING THE TEACHING OF SCHOOL LAW:

A CALL FOR DIALOGUE

*Suzanne R. Painter**

I. INTRODUCTION

Those who teach school law to preservice school administrators may agree that they share the essential objective of preparing entry-level administrators to apply a basic knowledge of school law in common school settings. However, putting this general instructional goal into practice is a formidable task for a number of reasons including the nature and extent of school-related law, student and training program characteristics, and the lack of pedagogical training available to instructors. Recent developments in cognitive science¹ and concurrent interest in administrative training reform² provide a basis for reconsidering important aspects of school law courses in order to address these complexities. This article first frames these issues for

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1. HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (John D. Bransford et al. eds., 1999) [hereinafter Bransford]. This authoritative summary of the research in the science of learning was produced as the result of a two-year project authorized by the National Research Council and performed under the auspices of its Commission on Behavioral and Social Sciences and Education by the Committee on Developments in the Science of Learning.

2. See, e.g., Paul V. Bredeson, *New Directions in the Preparation of Educational Leaders*, in 1 INTERNATIONAL HANDBOOK OF EDUCATIONAL LEADERSHIP AND ADMINISTRATION (Leithwood et al. eds., 1996); EDUCATIONAL ADMINISTRATION: A DECADE OF REFORM (Joseph Murphy & Patrick B. Forsyth eds., 1999); THE NATIONAL POLICY BOARD FOR EDUCATIONAL ADMINISTRATION, IMPROVING THE PREPARATION OF SCHOOL ADMINISTRATORS: AN AGENDA FOR REFORM (1989).

discussion, then demonstrates how recent developments in cognitive science offer a basis for improving the transfer of learning from the school law classroom to administrative practice. Next, the article addresses specific issues in applying cognitive findings to the teaching of law including the selection and organization of course content, and the forms of instruction and assessment that should be considered. The article concludes by examining the larger aims of teaching law to school administrators and uncovering some of the constraints to this teaching. The goal of this article is to invite dialogue among all those interested in more effectively preparing preservice administrators for their future employment, especially those charged with teaching school law.

II. DISCUSSION

A. *The Need for Reform*

The time seems ripe for this discussion. In the past two decades, interest in reform of administrator training programs has heightened, yet discussions of these improvement efforts in the academic literature have rarely devoted more than cursory attention to the *teaching* of school law or its role in the curriculum.³ Nor does the extensive school law literature address teaching preservice administrators.⁴ As Heubert noted, this literature deals with analyses of court actions on educational matters, interpretations of the law for educators and their lawyers, and preventative actions that can forestall legal problems.⁵ This lack of attention to teaching school law seems at odds with the obvious importance of school law to practicing administrators. Heubert points out, "The law affects such central educational matters as school governance, curriculum, pedagogy, staffing, the physical conditions under which educators and students work, and equality of educational opportu-

3. See, e.g., Bredeson, *supra* note 2; EDUCATIONAL ADMINISTRATION: A DECADE OF REFORM (Joseph Murphy & Patrick B. Forsyth eds., 1999); THE NATIONAL POLICY BOARD FOR EDUCATIONAL ADMINISTRATION, IMPROVING THE PREPARATION OF SCHOOL ADMINISTRATORS: AN AGENDA FOR REFORM (1989).

4. Although the subject of teaching law (in law school) has been discussed in the literature, the teaching of school law to an audience of non-lawyers is neglected.

5. Jay P. Heubert, *The More We Get Together: Improving the Collaboration between Educators and Their Lawyers*, 67 HARV. EDUC. REV. 531, 534-36 (1997).

nity. Similarly, the success of any school reform initiative depends largely on whether and how legal requirements hinder or support it.”⁶ Moreover, practitioner publications contain regular columns on school law and frequently explore legal issues in their feature articles.⁷ Practitioner interest is not surprising as some of the most prominent problems currently facing building-level administrators are the result of legal mandates or legal concerns related to their abilities to act (e.g., implementing student assessments, responding to threats of school violence, and disciplining students with disabilities).

One of the general criticisms of administrative training programs is that the program content “is grounded in a professional knowledge base that is impoverished and often inappropriate to the daily work of practicing administrators.”⁸ Given its disciplinary basis and the extensive content, school law seems immune to the first part of this charge, but the second deserves consideration. Outside of school law courses, programs generally fail to adequately address the legal and regulatory environment in which program graduates work, leading to this criticism of training programs. In other words, the disconnect between professional preparation and practice may be related (in part) to academia’s unfamiliarity with or inattention to the legal environment. To cite one example, most leadership and school reform literature makes only a cursory reference to collective bargaining, yet bargained contracts with teachers unions may contain provisions that significantly affect school improvement and leadership efforts.⁹ Thus, program graduates steeped in instructional leadership may be unprepared to deal with workplace realities.

6. *Id.* at 532.

7. *See, e.g.*, PRINCIPAL, THE SCHOOL ADMINISTRATOR, AMERICAN SCHOOL BOARD JOURNAL, AND SCHOOL BUSINESS AFFAIRS.

8. Bredeson, *supra* note 2, at 256.

9. Principals identified collective bargaining and union contracts as a constraint on instructional leadership in K.A. Leithwood & D.J. Montgomery, *The Role of the Elementary School Principal in Program Improvement*, 52 REV. EDUC. RESEARCH 309 (1982) as cited in K.A. Leithwood et al., *The Nature, Causes And Consequences Of Principals’ Practices: An Agenda for Future Research*, 28 J. EDUC. ADMIN. 5, 18. For union impact on reform generally, *see*, Susan Moore Johnson & Susan M Kardos, *Reform Bargaining and Its Promise for School Improvement*, in CONFLICTING MISSIONS? TEACHERS, UNIONS, AND EDUCATIONAL REFORM, (Tom Loveless ed., 2000); LEE STUART & STEVEN M. GOLDSCHMIDT, *COLLECTIVE BARGAINING IN AMERICAN PUBLIC EDUCATION: THE FIRST 25 YEARS* (Center for Educational Policy and Management, University of Oregon, 1986).

Whether administrators are adequately trained in law is a difficult question to answer. Surveys of administrators' legal knowledge have concluded that it could be improved,¹⁰ but surveys do not measure the ways that administrators use or fail to use their legal knowledge in practice. Those who have the ability to answer survey questions may not have what is termed "conditionalized" knowledge,¹¹ which is the ability to employ their knowledge in the appropriate setting. While students may profess interest in law courses and rate them highly, the outcomes of our training program with respect to law are essentially unexplored.

B. The Findings and Implications of Cognitive Science

Over the last decade, scholars who discuss the improvement of administrator training programs have drawn attention to the implications of cognitive science research on learning and teaching.¹² In a 1999 report, the National Research Council summarized and explained developments in these fields and their implications for instruction.¹³ This work has implications for broad program planning issues and offers a basis for rethinking the teaching of specific areas within these programs, including law. It offers new ways to ensure that most students develop a deep understanding of the subject matter, particularly school law.

Cognitive science addresses questions related to how individuals acquire, store, and use information – that is, how they learn. Previous work in information processing provides a three-part model of human learning: (1) a sensory register where information is noticed and (to some degree) interpreted before being passed into the working memory, (2) the working memory where information is actively attended to, problems

10. See, e.g., Earl J. Ogletree & Nancy Lewis, *School Law: A Survey of Educators*, 35 DEPAUL L. REV. 259 (1986); Gary L. Reglin, *Public School Educators' Knowledge Of Selected Supreme Court Decisions Affecting Daily Public School Operations*, 30 J. EDUC. ADMIN., 26 (1992). One survey of Colorado administrators found they rated themselves well-prepared in legal responsibilities and safeguarding legal rights of students, staff and parents, but less well-prepared in administering the collective bargaining agreements. See MARTINA WAMBOLDT & JAMES HENNES, COLO. ST. DEPT. OF EDUC., 1992 SURVEY OF COLORADO SCHOOL ADMINISTRATOR PREPARATION PROGRAMS.

11. Bransford, *supra* note 1, at 19.

12. COGNITIVE PERSPECTIVES ON EDUCATIONAL LEADERSHIP (Philip Hallinger et al. eds., 1993).

13. Bransford, *supra* note 1.

are solved, and information is prepared for storage in long term memory, and (3) long-term memory where information is stored in related structures termed "schemata."¹⁴ Schemata in long-term memory also impacts the sensory register because previously held ideas influence the interpretation of new information. When individuals seek to retrieve information from long-term memory, they may meet with varying success depending, among other factors, on how well the information was learned and whether the information is well connected to other schemata. Because individuals construct their own schema and control their own sensory registers (e.g., the information to which they attend) and working memories (the degree to which they process information), cognitive scientists note that individuals construct their own learning. However, as any student or former student can attest, the teacher's actions can hinder or enable the learning process. Effective instructors know how to facilitate student attention to the important learning aspects and provide activities that assist in processing information. Moreover, they know the critical importance of attending to students' prior learning (prior schema) so that new information is perceived appropriately and richly connected to prior schema to facilitate retrieval.

One of the foundations of cognitive science is the study of expertise. Experts possess certain ways of thinking about their field of expertise that novices have not yet developed. Understanding the experts' thinking helps us understand how successful learners recognize and solve problems.¹⁵ Key characteristics of experts' knowledge are the following:

- Experts notice features and meaningful patterns of information that are not noticed by novices.
- Experts have acquired a great deal of content knowledge that is organized in ways that reflect a deep understanding of their subject matter.
- Experts' knowledge cannot be reduced to sets of isolated facts or propositions but, instead, reflects contexts of applicability; that is, the knowledge is 'conditionalized' on a set of circumstances.
- Experts are able to flexibly retrieve important aspects of

14. For readable descriptions of cognitive information processing, see JEANNE ELLIS ORMROD, *HUMAN LEARNING* 163-316 (2d ed. 1995).

15. Bransford, *supra* note 1, at 19.

their knowledge with little attentional effort.

- Though experts know their disciplines thoroughly, this does not guarantee that they are able to teach others.
- Experts have varying levels of flexibility in their approach to new situations.¹⁶

In the past two decades, scholars have attempted to understand how expert school administrators process problems.¹⁷ After reviewing this research and the basic elements of the cognitive perspective, Allison describes what expert administrators would do from this framework:

[W]e would expect proficient educational administrators to detect and *find* problems that are not evident to other members of their organization. We would also expect them to be able to recognize both found and presented problems as belonging to a known *class* and, on this basis, to rapidly access appropriate schemata stored in memory. Yet even the most expert administrators will find or be presented with novel problems: situations where the appropriate course of action is not clear; where the problem space is poorly defined, where they must work through an open design problem. Under such conditions, experts would be expected to engage in extensive searches of their schematic memory and the task environment in an attempt to better *interpret* the problem.¹⁸

Applying these concepts more specifically to school law, expert administrators would be expected to notice features of situations that raise legal implications that might not be evident to other organization members. They would be able to classify the problem (an issue of a student's right to free speech or due process), connect it with underlying principles, and access the appropriate legal tests and arguments. They would also recognize when the problem was one not easily resolved, and thus required more thought, study, fact gathering, or the opinion of an expert in school law. By contrast, a novice or non-expert administrator might not recognize that a situation had legal implications, might misclassify it, fail to recognize the

16. *Id.*

17. These efforts have been summarized in DEVELOPING EXPERT LEADERSHIP FOR FUTURE SCHOOLS (Kenneth Leithwood et al. eds., 1993), and in KENNETH LEITHWOOD & ROSANNE STEINBACH, EXPERT PROBLEM SOLVING: EVIDENCE FROM SCHOOL AND DISTRICT LEADERS (1995).

18. Derek Allison, *Problem Finding, Classification and Interpretation: In Search of a Theory of Administrative Problem Processing*, in 1 INTERNATIONAL HANDBOOK OF EDUCATIONAL LEADERSHIP AND ADMINISTRATION 477, 499 (Leithwood et al. eds., 1996).

larger issues involved, and act precipitously, illegally, or without attention to the underlying principles. A novice would be less likely to use legal problem-solving strategies.

The overarching goal of administrative preparation programs should be to develop expert administrators' problem-solving capabilities. Those programs should teach the skills and knowledge necessary to recognize, classify and interpret administrative problems, including legal problems, with attention to underlying principles. In order to be activated when problems arise, beginning administrators' law-related knowledge and skill must be integrated into their problem-solving framework, not isolated in unconnected schema. In other words, knowledge of the law (like other administrative knowledge) must be retrieved and applied appropriately during routine and non-routine problem solving.

How can school law courses facilitate this goal? A full discourse on the application of cognitive theory to law courses is beyond the scope of this paper, but selected elements are discussed below.

C. *The Selection of Course Content*

Experts possess deep and well-organized understanding of their subject matter.¹⁹ This is a particular challenge for school law instructors to face in light of the broad content areas to be covered and the inevitable time constraints on law courses. The press for developing deep knowledge requires time,²⁰ but instructors face a concurrent press for breadth of coverage driven by their concern that students may complete their programs without an understanding of some legal areas that could prove crucial to future decision-making and even to the continuation of their careers. Addressing a wide variety of topics, however, means there is less time devoted to developing the deep understanding that characterizes expertise, and less time to abstract and develop general principles that facilitate the transfer of learning to different contexts.

School law textbooks are of little help to instructors struggling with this dilemma.²¹ As Sacken noted almost fifteen years

19. Bransford, *supra* note 1, at 19.

20. *Id.* at 44.

21. A recent survey of 110 teachers of school law courses revealed the most popular text (used by 45% of respondents) to be ALEXANDER & ALEXANDER, AMERICAN

ago, "most texts appear wholly impossible to cover in a single semester or quarter."²² Textbooks are developed for a national market; consequently, they concentrate on federal law and exclude state law or cover it only in the most general terms. However, education is a state function; therefore, state statutes are the source of governing board and administrative authority.²³ Statutes typically set forth the legal requirements of primary concern to school building level administrators including those related to student attendance, teacher evaluation, curriculum, and assessment.²⁴ To complicate matters further, the principals' legal environment also includes school district policies and procedures and perhaps collective bargaining agreements. How does an instructor choose content that appropriately prepares beginning administrators to understand and apply the varying sources of law? This conundrum deserves discussion and would be aided by research that explores administrators' practice.

In the meantime, one criterion for including course topics for preservice administrators should be its relevance to building-level administration. One study found the most frequent problems identified by principals were related to teachers (27%), school routines (15%), students (13%), and parents (12%).²⁵ While there will always be overlap, it seems reasonable to focus a beginning law course on concerns that most beginning building-level administrators will face (e.g., tort liability, student attendance, and student rights to due process). Advanced courses or inservice training should then address central office concerns such as school boundaries, school board

SCHOOL LAW. Following, but used by no more than 20% of respondents, were MCCARTHY & CAMBRON-MCCABE, PUBLIC SCHOOL LAW; LAMORTE, SCHOOL LAW; REUTER & HAMILTON, THE LAW OF PUBLIC EDUCATION; FISCHER ET AL., TEACHERS AND THE LAW; and YUDOLF ET AL., EDUCATIONAL POLICY AND THE LAW. Other textbooks were selected by fewer than 10% of the respondents. Kathleen A. Sullivan & Perry Z. Zirkel, *Education Law Texts Usage: Survey Results*, 27 J.L. & EDUC. 423, 426 (1998).

22. M. Donal Sacken, Multiple Dimensions of School Law Courses, Paper presented at the annual meeting of the University Council for Educational Administration. Charlottesville, Va., (Oct. 30-Nov. 1, 1987) at 13.

23. For a brief discussion of the legal basis for state educational authority see KERN ALEXANDER & M. DAVID ALEXANDER, AMERICAN PUBLIC SCHOOL LAW 21-56 (4th ed. 1998).

24. Only 32% of school law instructors responding to Zirkel and Sullivan's survey, *supra* note 21, at 427, required or strongly suggested state codes in their courses.

25. KENNETH A. LEITHWOOD & ROSANNE STEINBACH, EXPERT PROBLEM SOLVING: EVIDENCE FROM SCHOOL AND DISTRICT LEADERS (1995).

elections, open meeting laws, and school finance. As Sacken noted: "Attempting to teach an audience of preservice building administrators about the abortive school finance revolution or bidding procedures may be an indulgence."²⁶

Also, it may be helpful to consider Kerchner's general observation about administrator training, "We probably overeducate for the unusual and fail to teach students to recognize the strategic potential in their everyday activities."²⁷ The use of case law, especially appellate court cases, forces an emphasis on nonroutine situations as opposed to routine, since routine problems of administration seldom make it to trial, let alone to appellate courts.²⁸ This concern deserves more attention. Practitioners need information for practice. Some areas of the law are fairly routine for experienced administrators. For example, high school administrators responsible for student discipline will routinely be confronted with investigating misconduct that may include decisions about whether and how to search students, their backpacks, and their lockers for contraband. How can beginners be assisted in making these determinations? The ability to transfer learning to the real world is enhanced when learners practice the learning in multiple contexts.²⁹ This suggests that multiple hypothetical scenarios, which develop the essential themes embodied in the case law, are critical. However, many textbooks simply provide the essential case from the U.S. Supreme Court³⁰ and then shift to the other high profile search cases, such as using dogs to sniff for contraband,³¹ or urine testing of students participating in extra-curricular activities.³² These are non-routine events for most building-level school administrators. Such non-routine administrative problems, although interesting for course instructors, are not the most beneficial for preservice administrators who need assistance with applying search and seizure standards in multiple routine contexts.

26. Sacken, *supra* note 22, at 12.

27. Charles Kerchner, *The Strategy of Teaching Strategy*, in *COGNITIVE PERSPECTIVES ON EDUCATIONAL LEADERSHIP* 5, 17 (Philip Hallinger et al. eds., 1993).

28. Sacken, *supra* note 22, at 17.

29. Bransford, *supra* note 1, at 66.

30. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

31. *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982).

32. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

D. How is the Content Organized?

Expert knowledge is organized around core concepts of "big ideas" in their domains that guide their thinking – it is not simply a bundle of facts or formulas. Therefore, "[l]earning must be guided by generalized principles in order to be widely applicable. Knowledge learned at the level of rote memory rarely transfers; transfer most likely occurs when the learner knows and understands underlying principles that can be applied to problems in new contexts."³³

This suggests that teaching should be organized around these fundamental ideas, so that novices have a useful structure for application of their knowledge. Textbooks typically offer one source of organization: by topic area (e.g., curriculum, student discipline, religion, etc). This is a common pedagogical practice in many subject areas. Presumably, administrators encountering a problem of practice will classify it by these topic areas. However, recent cognitive research findings suggest novices are more likely to classify problems on the basis of the problems' surface attributes while experts classify them by principles that may apply to their solutions.³⁴

[E]xperts first seek to develop an understanding of problems, and this often involves thinking in terms of core concepts or big ideas Novices' knowledge is much less likely to be organized around big ideas; they are more likely to approach problems by searching for correct formulas and pat answers that fit their everyday intuitions.³⁵

These findings suggest that curricula in general should be organized around important concepts.³⁶ Applying this principle to school law suggests that course content should be organized around legal principles (e.g., First Amendment rights to free speech or the establishment of religion) to facilitate the learning of these core concepts. Organizing a portion of the course around a principle such as due process offers opportunities for students to apply this principle to issues of both student and

33. Bransford, *supra* note 1, at xiii.

34. *Id.* at 26. Also, some work on the problem solving of expert vs. non-expert principals indicates that expert principals solving ill-structured problems have been found to define problems in terms of more basic principles than do non-experts. Kenneth A. Leithwood & Mary Stager, *Expertise in Principals' Problem Solving*, 25 EDUC. ADMIN. Q. 126-161 (1989).

35. Bransford, *supra* note 1, at 37-38.

36. *Id.* at 30.

teacher discipline, thereby developing a deeper, more complex, and thus more transferable understanding of the concept.

Since experts have knowledge that is well-organized, it follows that helping students organize information may be critical to their developing expertise. In fact, research in teaching physics indicates that students who received hierarchical organization of problem-solving strategies performed much better than students who received the same strategies non-hierarchically.³⁷ "Thus, helping students to organize their knowledge is as important as the knowledge itself, since knowledge organization is likely to affect students' intellectual performance."³⁸ School law often presents students with an overwhelming amount of new information. A key task for the instructor is to assist students with organizing the information. This suggests that instructors could aid student learning by grouping information in logical or sequential ways. For example, providing students with a flow chart or some other scaffold that outlines an order of analysis may help them develop a systematic approach to analyzing possible legal problems. Without such a disciplined approach, students are more likely to latch onto the first possible issue that comes to mind and ignore other related principles, a common error in novice thinking and problem-solving. A teacher might, for example, provide a template that proceeds from governing board policy to relevant statutes to constitutional issues, so that analysis proceeds methodically. These models, if tailored to students' current levels of knowledge and skill, could assist with their mental organization of information to make it more accessible in practice. Organizing scaffolds provided by textbook writers would aid instructors, and research about the conceptual maps used by expert administrators would be of inestimable value in improving the teaching of law.

E. How is the Law Content Taught?

Cognitive science directs us to the principles of learning that underlie successful teaching. These principles, rather than any specific activity, ought to be the primary consideration when instructors plan their courses. No one activity is a pana-

37. *Id.* at 164 (paraphrasing B.S. Eylon & F. Reif, *Effects of Knowledge Organization on Task Performance*, 1 COGNITION & INSTRUCTION 5 (1984).

38. *Id.* at 164-65.

cea, and the best activities can be misused. The traditional emphasis in law schools on case-based learning seems to have carried over into school law courses in colleges of education, at least to some degree. Certainly, many school law textbooks rely heavily on legal cases.³⁹ Cases do have the advantage of situating legal knowledge in real world scenarios, and (usually) of making explicit the expert problemsolving of the jurist. However, neither assigning cases as reading nor the development of conditionalized knowledge (e.g., knowledge that is appropriately applied in the field) guarantees a case-based approach. For example, requiring students to memorize names, dates, and significant holdings is unlikely to impact their ability to transfer that knowledge to practice. Concentrating too much attention on one case may even prove counter-productive as students may fail to transfer their knowledge to other settings.⁴⁰ It may be that students presented with a hodgepodge of cases will make no adequate connections between them. In other words, the ability to store and retrieve learning in long-term memory is compromised because the cases are neither connected to each other, nor to important principles in meaningful ways, nor related to the students' prior experiences.

On the other hand, a case-based approach may be effective if it helps students develop their problem-finding skills, assists them with elaborating and connecting new information to prior schema, and facilitates transfer to new situations in the workplace. In fact, some cognitive theorists believe that experts solve problems by a case-based method, which involves searching their memories for similar cases from their past experience and reasoning analogically to find a solution for new problems, rather than applying top-down principles.⁴¹ The benefit of using cases can be realized if the analogical thinking is made explicit for students, who then have opportunities to employ this type of thinking in solving other problems of practice. In order to promote the transfer of learning, the principles should be illustrated in multiple contexts with examples that demonstrate wide application of these principles.⁴² Otherwise, cases are just stories with the points of comparison unarticulated and per-

39. See, e.g., ALEXANDER & ALEXANDER, *supra* note 21; IMBER & VAN GEEL, EDUCATION LAW (1998).

40. Bransford, *supra* note 1, at 50.

41. *Id.*

42. *Id.* at 66.

haps misapplied. To assume that novice readers of legal cases can employ analogical reasoning and abstract core principles without considerable assistance may be a stretch. "The ability to remember and execute individual sets of concepts and skills provides no guarantee that people can orchestrate these components to produce important, complex performances such as those involved in thinking, writing and problem-solving."⁴³

The idea that learners construct their own learning has sometimes been misconstrued to mean that teachers should not lecture students, but that students must derive their knowledge inductively. This is not so.⁴⁴ Learners who actively attend well-designed lectures can create significant new learnings as they modify their conceptual schema. However, learners can also misunderstand new information. Thus, it is important that teachers prompt students to activate their relevant prior knowledge in order to connect it to new learning, and that teachers monitor student understanding in order to correct errors in thinking. This is difficult to do in lectures but quite possible when lecture is combined with discussion or activities.

F. *How is Learning Assessed?*

Planning for the assessment of student learning is a critical aspect of curriculum development.⁴⁵ This assessment, which is the most salient portion of the course for many students, should be aligned with the goals, of transfer of learning, suggesting the need to scrutinize the exams, quizzes, and group reports that form the basis for grading with this criterion foremost. In years past, when conceptions of adequate knowledge and learning were equated with memorization and recitation, assessments focused on the ability to answer factual questions. As our goals for learning have evolved, assessments must also evolve to remain aligned with expectations. Can students identify legal issues in common school events and apply their knowledge to discern a reasonable course of action? What assessments might reveal the extent of their learning? Essay exams that respond to hypothetical fact situations would seem to

43. John D. Bransford, *Who Ya Gonna Call? Thoughts about Teaching Problem Solving*, in *COGNITIVE PERSPECTIVES ON EDUCATIONAL LEADERSHIP* 174 (Philip Hallinger et al. eds., 1993).

44. Bransford, *supra* note 1, at 11.

45. *Id.* at 139.

hold a clear edge over multiple choice exams, but beyond this, what alternatives can we generate?

G. *Larger Aims*

The discussion of the content and instructional strategies used in school law courses has to this point assumed a clarity about course objectives that is convenient for the purpose of discussing instructional decisions, but that clarity is most likely illusory. Generally, students should be able to apply legal knowledge to common practice problems. But what does this mean exactly? Practitioners and scholars have put forth considerable effort over the last decade to delineate the knowledge base for administration, producing several sets of standards.⁴⁶ The 1993 report of the National Commission for the Principals-ship (NCP)⁴⁷ offers a detailed list of subject matter content (e.g., federal and state constitutional, statutory and regulatory law, liability, contracts, and accounts) and key behaviors (e.g., articulating the legal issue, delineating a legal rationale that guides conduct, and justifying conduct in light of conformity with legal principles) expected of administrators. Thus, the NCP standards describe a two category classification of knowledge consisting of: (1) the content that should be learned, and (2) the problem-solving skills that will help learners apply the content to real-world dilemmas *to determine the limits on administrative* conduct. This view of school law is implicit in textbooks and legal literature.

In an article addressing the role of law and ethics in preparation programs, Bull and McCarthy describe this perspective on the law and its role in administration as a "technical" perspective. They explain the common misapprehension that:

[L]aw and ethics are often assumed to lay out firm boundaries within which legitimate professional prerogative is to be exercised. On the one side of these boundaries, law and ethics are assumed to prescribe strict mandates about what schools and school professionals are to do. On the other side of the boundaries, school authorities are assumed to have discretion

46. See, e.g., NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS, ELEMENTARY AND MIDDLE SCHOOLS PROFICIENCIES FOR PRINCIPALS (3d ed. 1997); INTERSTATE SCHOOL LEADERS LICENSURE CONSORTIUM, COUNCIL OF CHIEF STATE SCHOOL OFFICERS, STANDARDS FOR SCHOOL LEADERS (1996).

47. NATIONAL COMMISSION FOR THE PRINCIPALSHIP, PRINCIPALS FOR OUR CHANGING SCHOOLS: PREPARATION AND CERTIFICATION (Scott Thompson, ed. 1990).

to act in accord with their own professional judgment and preferences, free from the constraints of law and ethics. From this common perspective the function of legal and ethical training for school administrators is to ensure that school leaders locate the boundaries accurately so that they can determine just where their professional autonomy stops and compliance must begin.⁴⁸

Bull and McCarthy call instead for an expanded view.

Those who hold a technical view of the law tend to assume that the emphasis is on the product (the legal mandates) rather than on the process (i.e., how mandates are developed, interpreted, and applied). To gain a robust legal perspective, one must move beyond the directives and understand the major forms of legal argument and decision making.⁴⁹

This does not mean that knowledge of legal mandates is unimportant because such knowledge can help administrators anticipate situations that might cause legal vulnerability. But beyond compliance, an immersion in the law and legal reasoning means that:

[E]ducators should begin to ask more critical questions in approaching school situations and the competing interests involved. An understanding of legal reasoning can enhance the process of identifying problematic situations, anticipating alternative conclusions and their consequences, and seeking principles and data to support a conclusion or to allow for intelligent choices among alternatives. . . . Instead of viewing the law as simply setting boundaries for actions, a legal perspective provides a valuable vantage point that can lead to more informed and better decisions and can enable educators to perform their jobs more effectively.⁵⁰

Bull and McCarthy maintain that understanding the dynamic nature of the law, and its protocols for balancing competing interests, can help administrators with a process for problem solving. Educators are not passive conduits, but interpreters and shapers of the law as they make daily administrative decisions. Thus, knowing boundaries is important, but alone is insufficient.

Should the role of school law in administrator training pro-

48. Barry L. Bull & Martha H. McCarthy, *Reflections on the Knowledge Base in Law and Ethics for Educational Leaders*, 31 *EDUC. ADMIN. Q.* 613, 614 (1995).

49. *Id.* at 616.

50. *Id.* at 619.

grams be expanded beyond the technical view? Can students' understanding on this point be developed so they not only recognize and resolve common dilemmas, but act with a larger sense of the principles of law that underlie the conduct of civic life? Would such a perspective place the law in too prominent of a position? Sacken contends that law should be "ancillary to 'core questions'" in colleges of education, and "[i]n many, perhaps most interesting and important educational issues, the school law component may be necessary, but wildly insufficient."⁵¹ He supports an integrative approach that might help students avoid common misconceptions and see that law is "part of the negotiated order, no less tentative and variable than all of that order,"⁵² which cannot be looked at "in isolation from all the other types of knowledge about educational organizations" that inform administrative decisions.⁵³ Thus, where McCarthy and Bull see the potential of the law as a foundation for problem-solving, Sacken fears it will dominate other forms of educational knowledge that should be of equal import.

Training program developers and law course instructors may not raise these issues concerning the goals of legal instruction in administrator training. Nevertheless, their unexamined actions likely reflect one of these perspectives. Articulation of the implicit perspective and consideration of the alternatives presented (as well as other possible views) should, at the least, provide a basis for raising questions and exploring possibilities. How do we design courses that, at a minimum, help students apply their legal knowledge to real-world dilemmas? Is it possible (or desirable) to set the bar higher by teaching legal reasoning skills that can inform decision-making without over-emphasizing the importance of the law to the exclusion of other frameworks for decision-making in education?

H. Constraints

In planning for any type of teaching, instructors must account for the constraints within which they operate. The teaching of school law is no different. One constraint is time. For the typical three credit-hour course in school law, approximately 45 clock hours will be spent in the classroom. Some institutions

51. Sacken, *supra* note 22, at 1.

52. *Id.* at 11.

53. *Id.* at 7.

offer law courses on even more abbreviated schedules: three weekend marathons consisting of Friday night and all day Saturday sessions, for example. These time constraints limit students' ability to learn. "Attempts to cover too many topics too quickly may hinder learning and subsequent transfer because students (a) learn only isolated sets of facts that are not organized and connected or (b) are introduced to organizing principles that they cannot grasp because they lack enough specific knowledge to make them meaningful."⁵⁴

One solution to this dilemma may be to integrate legal concepts into other courses. Programs that make concerted attempts to integrate the subject matter face their own problems. Success depends on the expertise and cooperation of other faculty members, not many of whom may possess adequate knowledge to link law to their content areas. Problem-solving frameworks used by other faculty may be much different than legal problem solving methods. Personal constraints exist as well: there are limits on the time an instructor can devote to collaboration, preparation, grading, and giving feedback to students.

III. CONCLUSION

This article has argued that the content, structure, and role of school law courses in educational administration training programs should be reviewed. Increasing agreement that administrative training ought to focus on problem solving offers opportunities to re-conceptualize how law is taught and how it is integrated into other problem-solving experiences of students. Assisting students to identify the underlying principles of law will naturally raise human conflict issues— the underlying problem in many administrative dilemmas. Deep understanding of the principles of reasonableness, due process, and other legal concepts can assist administrators in identifying and resolving many common school problems.

In re-conceptualizing the teaching of school law, we ought to pay heed to the problem-relevant knowledge that principals need. Leithwood, Hallinger and Murphy call for identifying the problems administrators face, classifying these problems in ways that reflect the underlying expert knowledge required,

54. Bransford, *supra* note 1, at 46.

understanding the nature of the knowledge used by these experts, and then reconstructing the curriculum to provide this knowledge.⁵⁵ There is a body of work that addresses expert school administrators' problem solving, but it does not address their use of the law specifically.⁵⁶ Researchers pursuing these goals should seek to increase understanding of how expert administrators acquire, organize, and apply their legal knowledge to aid in the re-design of law courses.

Cognitive science offers much to instructors reconsidering their teaching decisions. Advances in this field provide insights than can make instruction more effective for many students and produce graduates who are able to use their knowledge more efficiently in the field. Dialogue among instructors of these courses can produce synergistic ideas and energy that lead to better course delivery. Because both lawyers and non-lawyers teach law courses, such a discussion also might help bridge the divide between educators and lawyers as noted by Heubert.⁵⁷ Given that expertise in a discipline does not guarantee that one can instruct others effectively,⁵⁸ lawyers may learn from educators the techniques of modeling, scaffolding, alignment of curriculum, and assessment practices that enhance learning for their students. Recognizing that experts in law may provide insights into organization of knowledge, the identification of patterns, and the attention to underlying principles, educators may learn to organize content to help preservice administrators apply their knowledge. The benefits of this dialogue may thus bridge more than one divide.

55. See, e.g., DEVELOPING EXPERT LEADERSHIP FOR FUTURE SCHOOLS, *supra* note 17; LEITHWOOD & STEINBACH, *supra* note 17.

56. See, e.g., Leithwood & Stager, *supra* note 34.

57. Heubert, *supra* note 5, at 533.

58. Bransford, *supra* note 1, at 19.