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Book Review

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BOOK REVIEW

VICTOR G. ROSENBLUM*

EDUCATION LAW—PUBLIC AND PRIVATE, By William D. Valente, (West Publishing Co., 1985) (Two Volumes—1,242 Pages).

Breadth, depth and precision of analysis are hallmarks of Professor Valente's two-volume treatise on education law. Proclaiming at the outset that his treatise "endeavors to organize, within a rational, comprehensive framework, the mass of laws that govern the educational efforts of parents, schools and society," the author proceeds to examine carefully but succinctly the applicable norms and central issues surrounding and affecting the structures, processes, curricula, personnel, and finances of education.

Professor Valente's deft, insightful probes focus on the doctrines and key precedents concerning programs (curricular and extracurricular) for implementing educational objectives; standards and conditions of employment for educational personnel, including general and due process rights of professional staff, the status of antidiscrimination laws, and disciplinary and competence-related suspensions and dismissals; and student rights and obligations, including particularly astute inquiries into search and seizure issues exemplified by the recent *TLO* decision of the Supreme Court,¹ and into issues surrounding education of gifted and handicapped children. Dimensions of tort liability and of school financing, that pose increasingly acute challenges to education budgets and policies, also receive appropriate consideration and balanced evaluation.

Thirty-two "appendix tables" for reference purposes constitute the last 200 pages of the treatise. They seek to chart state standards for public education, mandatory collective bargaining laws, privacy rights of parents and students, federal civil rights statutes, state educational expenditures, and public and private school enrollments among other pertinent data.

Professor Valente's treatise is incisive, instructive, reliable and readable in guiding educators through the maze of legal rights, duties, uncertainties, anomalies and frontier issues. His footnotes and annotations enhance the helpfulness of his textual descriptions and analyses. Prob-

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1. *New Jersey v. TLO*, 105 S. Ct. 733 (1985).

tive gems are plentiful, one of many being examination of the doctrine of right to receive information invoked by the plurality in the Supreme Court's 1982 *Island Trees*² decision. Indeed, all 110 pages of Chapter 16 on Student Rights and Discipline strike me as model integrations of determinable black letter law with sensitively delineated problems of policy and discretion. They make the treatise a valuable intellectual stimulant beyond its primary function as an educator for educators about law's contents and limitations.

The discussions of equal opportunity and antidiscrimination law in Chapter 17 (and in pages 388-399 of Chapter 21) are equally instructive and challenging. There, Professor Valente conducts the reader through the "confusing mix" of constitutional and statutory principles that neither Congress nor the courts have "undertaken any attempt to dovetail or integrate." Notwithstanding his appropriate caveat that difficult issues of fact characterization, official motivation and the adequacy of proofs to support opposing contentions about discrimination "are not fully resolved in law," he proceeds systematically and cogently to pinpoint and summarize available legal doctrines, principles, and precedents in terms of their specific application to identified minorities.

While denying vigorously that he has undertaken comprehensive coverage of constitutional, statutory and administrative dimensions of antidiscrimination law ("The mountain of constitutional and statutory law which courts and legislators piled up in the last thirty years leaves too many unexplored slopes and byways . . ."), he digs to the cores of constitutional and statutory rights and remedies, especially with regard to national origins discrimination, sex discrimination, religious discrimination, alien and age classifications, and discrimination against the handicapped and gifted. Given the judicial vagaries that range through the field, his discussions are especially enlightening, concise and up-to-date.

Professor Valente is not content merely with setting out the legal norms with which educators must comply. He delves deeply into the possible consequences of violations, particularly tort liability for individuals and entities under federal and state law. Chapters 18 and 19 and pages 399 to 419 of Chapter 21 face candidly and thoroughly issues of immunity, standards of care, negligence, malpractice, defamation, vicarious liability, and statutes of limitation. Superb consideration is accorded the bearing on tort liability of major judicial decisions of the 1980's. Even the interactions of the Constitution's Thirteenth, Fourteenth, and Fifteenth Amendments with Eleventh Amendment doctrines of state im-

2. *Island Trees Union School District v. Pico*, 457 U.S. 853 (1982).

munity receive careful and sophisticated attention. Professor Valente counsels educators wisely that empirical tests rather than abstract classifications are likely to be applied in judicial evaluations of claims of immunity.

My enthusiasm for Professor Valente's contribution is accompanied by a few items of reviewer's cavil. For example, in a treatise otherwise so thorough, why must the United States Constitution be presented in only skeletal form? Educators would scarcely suffer from having the entire text of the Constitution available, rather than a Reader's Digest version. I wish, too, that such cases as *Youngberg v. Romero*³, which emphasize the relevance to judicial decisionmaking of professional judgments, could have received more extensive analysis. Detailed probing of the scope and limits of reliance upon and deference to professional judgments by the courts would enhance a salient aspect of the treatise.

My third wish would have been that in discussing personal liability of school administrators and employees, the author might have enlarged upon his suggestion that protecting such individuals through indemnity or liability insurance would be appropriate. One cannot fault the author for failing to anticipate the present insurance crisis; nonetheless a reviewer with all the advantages of hindsight can't help wishing that the criteria and capacities for implementing "intelligent determinations of the level and scope of insurance coverage that is to be sought" could have been considered in fuller detail. I recognize that if every colleague's sense of saliency were to govern the author's work, the final product would become a massive, unmanageable tome. The point worth stressing in this review is that Professor Valente has done a remarkable job of raising, discussing, analyzing and annotating the core and nuanatial legal issues of public and private education for our times. The treatise is bound to become "must" reading for educators and their lawyers.

3. *Youngberg v. Romero*, 457 U.S. 307 (1982).

