

## **Legal Ethics No Paradigm for Educational Administrators**

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### **Shifting Conceptions of the Ethical**

For most of the past two millennia, it was commonly understood that there is no important distinction to be made between ethics and morals. Even as recently as 30 years ago, university catalogs were likely to list courses as either “ethics” or “morals.” Regardless, in each case the content descriptors were identical. Conceptually, this lack of distinction makes sense since ethics and morals are each simply sentences that prescribe or prohibit action. Moreover, even the law is not meaningfully separate from morality since it represents that set of rules for social engagement that those who hold the sovereignty of state wish to endorse and enforce (Kierstead & Wagner, 1992).

Today in certain sectors of the professional world some of these traditional understandings are undergoing considerable change. The discussion that follows will focus on two professions in particular, education and the law. There are three reasons for singling out these two professions. First, each is one of the four historic professions. The four historic professions, teaching, lawyering, doctoring, and preaching, have been ubiquitous across several millennia and across geographic barriers. Together the historic professions serve as models for other occupational groups intent on professionalizing their organizations (Abbot, 1994; Freidson, 1988; Macdonald, 1995). Second, the relationship between the law and education has become increasingly intimate both because of the rise of civil litigation generally and because of the increase in

disruptive legislation bringing state and federal authorities ever closer to micro-managing school districts (Heubert, 1977). Third, to the extent that educational administrators begin to mirror changes of attorneys in the practice of law, the more educational administrators may drift from their authoritative and traditional moral vision.

### **A Story of a Historical Profession: Lawyering**

The credibility of the legal profession is waning in the eyes of the public (Rosenholtz, 1991). Educational administrators have a duty to the profession they represent to do all they can to ensure that a similar fate does not befall the educational profession. To the extent that education leaders look to the legal profession for a model of professionalism, they risk devaluation in the public's eye. Educators have a moral vision distinctly separate from the legal profession. More than anything else it is the manifest commitment to the profession's traditional moral vision that preserves the profession's credibility in the public imagination (Wagner, 1993). Still the necessity for educational administrators to rely on legal advice increasingly makes modeling the value set of the legal profession a tempting distraction. Unavoidably, today's administrators increasingly find the need to refer to legal precedent and think somewhat like a lawyer when framing policy and managing the resulting dictates of policy.

As alluded to above, the law has traditionally been considered a subset of public morality (Murphy & Nagel, 2002). Criminal law is an obvious example, but all law is shot through and through with moral commitments (both good and bad, as history illustrates). Consider the law of contracts: At its core it is essentially the law of promise-keeping (Ayres & Klass, 2005; Wagner & Simpson, 2009). Similarly, tax law is about the moral rightness of funding alleged public goods and in enlightened democracies includes some redistribution of wealth reflecting concerns for distributive justice. Finally, even the law of procedure and the law of evidence both address matters of jurisdiction, venue and admissibility of evidence respectively, each in an effort to secure some measure of social justice (Bayles, 1990; Ho, 2008; Stein, 2005).

Admittedly, what the law *is* does not dictate how attorneys *ought* to manage their affairs as officers of the court. Applications of the law may flourish or wither in the hands of both able and incompetent attorneys and jurists, but in each case the message and intent of the law itself remains unchanged. Officers of the court are to serve the purpose of jurisprudence. Jurisprudence is not meant to be subordinated to the whims and capriciousness of practicing jurists. Consider for example, an instructive analogy between the legal profession and another his-

toric profession, medicine. In medicine, the highest of all over-riding principles is the profession's moral vision to do no harm. Yet in times of crisis or extraordinary emergency the practice of triage turns individual physician's priorities upside down, as it were. Instead of doing no harm and treating those most in need, individual doctors best serve the moral vision of the profession by doing what they can to save the largest proportion of ill-affected humanity. After World War II some German and Japanese doctors were convicted of war crimes—including torture and murder—for running experiments that may have been allowed by their country's laws and perhaps even nationalistically imposed codes of ethics (Nao, Takashi, & Li, 2009; Schmidt, 2009). Clearly torture and murder violate the medical profession's most widely acknowledged moral commitment to do no harm. So, knowing the specifics of a written code of ethics locally imposed does not, by itself, dictate what members of a specific profession owe to those they serve nor to whom they owe whatever it is that they owe.

As the analogy to medical ethics above suggests, determining the moral vision of a profession cannot be summed up simply by perusing a local code of ethics such as that of the American Bar Association. Bar association codes of ethics vary from one nation to another and sometimes even from one jurisdiction to another within the same nation. Codes of ethics are of great pragmatic utility to practicing professionals, but the moral vision of each of the four historic professions transcends any local code of ethics. This is evident not in the details of local codes but rather in the shared purpose local codes have in acknowledging the universal function of the profession. Recent talk of globalism in so many forums today can in fact find precedent in the moral ambience that has historically surrounded the globalism long inherent in the traditional professions. The cross-cultural ambience evidenced so often in the four historic professions hints strongly at the possibility of developing cross-cultural moral imperatives for people in all lines of work and in other social affiliations as well. In what follows the verbs doctoring, lawyering, teaching, and preaching will allude to each profession's moral function as evidenced by what the global community of the respective professions seems to honor rather than by what specific members or sub-groups may practice or otherwise extol. Shared professionalism across borders and historic epochs is best evidenced by overlapping shared moral vision of professionals as exhibited through the ideals of members and not in the shared possession of some Gnostic body of doctrine, codes, or other information.

To get a sense of the moral vision of lawyering, consider what Aristotle said in *The Politics* (1958). Aristotle made it clear that the reason for law and officers of the court is to make society (and not just Athens)

more civilized. Lest one think that was the end of the matter, a thousand years later an intellectual descendent of Aristotle, St. Thomas Aquinas, was similarly explicit in developing the idea that lawyering was meant to contribute to the well-being of community by administering the natural law ordained by providence. In short, attorneys were to make for a better community by helping people become more civil in the course of their social engagements with one another.

Advance yet another 600 years or so and note that there were English lords and country gentlemen of learning, wealth, and propriety who became representatives for others in the King's courts. These gentlemen of the court were awarded the honorific title of *esquire*, a title some attorneys still use on letterhead, though esquire has come to be equally attributable to women practicing law as men. The point here is to underscore the fact that lawyers were about making the world better, more civil, by offering proper counsel to both clients and the court. As officers of the court, attorneys were challenged to hold together one of the most beneficial institutions of human civilization, namely a system of jurisprudence presumably beyond the immediate whimsy and capriciousness of human nature.

This history of legal practice and its meaning today are still studied in law schools in an elective course titled jurisprudence (Whitman, 2008). The course does not typically draw large numbers since students know a course in philosophy of law is hardly as suitable for increasing billable expertise as, say, additional coursework in tax law or administrative law. Professional obligation is still addressed in law schools rather tangentially in a course nominally titled Legal Ethics. This course does not focus on the origin, role, and *ideal* proper service of officers of the court. Instead, such courses focus almost exclusively on what might get an attorney in trouble with the bar (Kaufman, 2008). Consequently, there is a strong temptation for institutional and social critics to observe that, in the absence of any idealism as might be expressed in shared moral vision what most law students are now getting is a course teaching them how to crawl under a barbed wire fence without getting cut (Stout, 2011).

To the extent that legal ethics has degenerated into little more than how to avoid sanctions, that is probably a bad thing for the profession, those they represent, and the society they serve (Freidson, 1988). This fear has been articulated by the American Law School Association's Committee on Ethics (Luban, 2007). In contrast, the American Bar Association has remained silent on the issue of moral vision, while many of its members openly scoff at the idea that a moral vision or any code of ethics without sanctions for specific violations could have any meaning (Freidson, 1988).

### **Historic Professions Are Not All Alike: Distinctions Are Found in Moral Vision**

As noted above, codes of ethics may vary, even within the same profession and within the same nation. But the moral vision of the profession generally, its function across time and place, remains unimpeached because moral vision *is* the central identity of a profession's function. An economist may know more about a certain area of law than do most lawyers, but that does not make the economist a lawyer. A person with no formal training may have a gift for teaching but that "gift" alone does not make her a professional teacher. Neither special training, organizational membership or, specialized knowledge identifies a person as a professional of a certain type. Neither does adherence to a set of enforceable sanctions establish professional identity (Wagner, 1992).

The moral vision identifying the professions is not especially difficult to identify. It presents itself with a certain ubiquity across barriers of time and place, certainly with minor context variations, but nothing so severe that the profession itself becomes unrecognizable. It is conceivable that an imaginary agnostic traveler (i.e., not herself a member of the profession and so having no longings to evangelize a given moral vision, but nonetheless familiar with the profession as practiced in a given time and place) could identify the doctors, lawyers, teachers, and preachers in a vast array of different cultures. In the case of lawyers, that vision seems perennially tied in with the idea of contributing to community by making relations and disputes more civil.

In education that moral vision is manifest in bringing students into a shared search for both individual and common understanding. There is no intent here to identify a canon or even a set of disciplines. Instead, the point here is simply to denote the all-inclusive practice of discussing openly and seriously all that humans wish truly to understand more fully. The content of that understanding may range from practical understandings of the combustible engine to cultural origins of etiquette to whether we live in a Big Bang universe or an Inflationary universe and on and on. Surely it is evident when dialogue is intended to be educative as opposed to intimidating, indoctrinating, chanting, or any of a myriad of other forms of human social engagement. Respect for others and a passion for understanding are but two characteristic elements that set educational practices aside from many other social practices (Wagner & Benevente, 2006; Wagner & Simpson, 2009). So, setting essentialist distractions aside, education is most assuredly a conversation of a certain type with nearly an inexhaustible appetite for further content, skeptical revision, creativity, and so on (Egan, 2011; Noddings, 2004, 2007).

Suffice to say the moral vision dictating the function of the two historic professions of lawyering and teaching is palpable to nearly everyone in every society wherein the professions exist. Again there may be objection to what local subsets of these professions are doing in practice, but these objections are nearly always framed in contrast to more global expectations of what members of these professions should be doing. To reiterate, lawyers are expected to contribute to the well-being of society by bringing reasoned representation into regulating human engagement. For their part, educators are expected to welcome all who wish to learn and thereby extend human understanding generally. That is one critical way teachers are generally understood to be set apart from mere advertising and sales practitioners and propagandists.

Training people to be military officers, preachers, or gentlemen has at times dominated certain institutional cultures, but that alone does not demonstrate that, even in those cultures where training priorities gained a certain ascendancy, the disparate vision of bringing learners into cooperative dialogue had been altogether lost. Training and education have long existed side by side. And even though some trainers may also be educators, those people who do both are engaged in different functions when training than when educating. When successfully educating others, the expectation is that learners will acquire a thirst for further learning. An “educator” who dampened such instincts in learners would generally be considered something of a failure by colleagues. On the other hand, successfully training people in, say close order drill in the military, does not lead to any expectation on virtually anyone’s part that learners should want to learn more close order drill.

The German Bar Association articulates the moral vision of the profession in its famous Rule Three of its Code of Ethics. The German Bar declares that no other rule shall ever limit adherence to Rule Three and no other rule can ever be considered greater. Rule Three demands that members of the bar recognize that their highest goal is the civilizing effect attorneys should have on their community. This rule carries no enforceable sanctions even though it is rightfully said to rise above all the rest in importance, since it indeed iterates the moral vision of the profession. To the disappointment of the Ethics Committee of the American Law School Association, too many members of the American Bar see no point to unenforceable sanctions such as the German Rule Three (Rhode & Luban, 2008). The cause for disappointment is obvious since in the absence of a moral vision all that is left to unify a profession is the power of those in charge to enforce their will through what they call (sanctionable) ethics (Kaufman, 2008). The call to duty in such a profession is lost, and at best what was once a proud and honorable

profession becomes little more than a facsimile of a medieval guild (Abbot, 1994). This is a step back from duty-driven professionalism.

### **Enforceable Codes Identify Guilds: Professions by Shared Moral Vision**

Medieval guilds defined themselves as artisans living by enforceable codes of ethics pertaining to job performance ensuring customers a minimal standard of performance. Such guilds were never confused with the four historic professions (Macdonald, 1995, p. 61). Whether or not the legal profession is in danger of losing its professional image and in the process of becoming more guild-like is not, however, the point of greatest interest to this discussion. What is of interest is what the profession of education must do to maintain its own distinctive professional image. More specifically, in what follows the point is to underscore how important it is for educational leaders, both administrators and policy-makers, to avoid mimicking what even some law professors acknowledge is the deteriorating professionalism of the American Bar (Rhode & Luban, 2008).

The danger that education may follow in the wake of the law is evident in the accruing emphasis by state departments of education on codes of ethics with explicit and well publicized sanctions. There is nothing obviously wrong with having sanctions or with making them generally well known. Both are advisable. The problem is raised when the point of the sanctions fades and attention merely to the sanctions and consequences themselves dominate educator attention (Brighouse, 2003). This disruption of appropriate focus has been noted by educational ethicists (Wagner, 1992). Just as in the case of the Ethics Committee of the American Law School Association, what professional ethicists may rightly notice in education or law may not evolve into a driving force within the respective professions themselves. As so many ethicists writing in education today have noted, the mission of education must always be kept in mind (Beck & Murphy, 1994; Kierstead & Wagner, 1992; Shapiro & Gross, 2007; Shapiro & Stepovich, 2005; Starrat, 2004; Stepovich, 2006; Strike, Haller, & Soltis, 2005; Wagner & Simpson, 2009). In speaking of the global function of education, the point is not to denote a canon or to be so specific as to list training objectives of any sort or specify curriculum in culturally determined terms. Rather, educational leaders need to show that what educators can do is share understanding with all potential learners in conspicuously non-prejudicial fashion.

One may argue there is some normative restraint inherent in such a description. Perhaps so, but it is of such a subtle scope that it is unlikely

to distract attention away from any period, culture, or practice in which education is evident.

Not only professional ethicists but the public itself is likely to disapprove of obsessive focus on sanctionable rules as the benchmark of professionalism in education (Rich, 1984). Professional educators are supposed to exhibit shared, manifest virtue directed towards servicing others, even at the expense of personal inconvenience. Professional educators are expected by the publics they serve to exhibit virtue and wisdom and not act simply out of fear of legalistic sanction or other sources of personal and professional distraction. Certainly this is as it is in most democratic nations at this time. In this light note, as does Lortie (2002), the public's reaction to zero tolerance policies, which were once in fashion. Zero tolerance policies may have made the machinery of organizational operations move more efficiently, but the cost for such operational efficiency seems to be in terms of what educators ought to value, namely the inclusion of all potential learners.

Zero tolerance policies fell out of favor because in the eyes of the public they sacrificed the moral vision of the educational function for a misguided notion of accountability. Certainly the public wants schools to be safe and efficiently operated, but not at a price so high that it turns schools into generic organizations lacking inclusion and the shared search for understanding.

Educational administrators should have been in the vanguard of those objecting to the insensitivity of zero tolerance practices. Since such practices represent a withdrawal from professional responsibility to educate all learners, for mere guild-like operational efficiency, administrators should have been the first to step forward and argue against tactics so counter-productive to educational function. The evident failure of zero tolerance policies to secure inclusion and to develop stakeholders' sense of community and social justice increasingly provoked public scrutiny. The current recovery from this lapse in professional judgment has been costly in terms of public support for the wisdom and competence of professional educators generally and educational administrators in particular.

### **The Public Is Eager to Embrace Educator Professionalism**

The public wants schools to model and direct student attention to better ways of managing social engagement. Because of such concerns, parents want educational administrators to model social commitment as part and parcel of educator professionalism. Part of the social commitment administrators are expected to model is how to help students achieve a better future. Accountability to rules seldom focuses upon on



such loosely defined but popularly supported commitments. Yet it is such commitments that matter most to the public and not transient demands for production of numbers that, even after they are produced, leave the public wondering why schools still are not what they are suppose to be (Noddings, 2007). It is unlikely that even school board members want administrators to avoid every possibility of litigation when the costs of such avoidance are consistently diminishing effectiveness of student education (Friedson, 1988; Lortie, 2002).

In general, the most consistent shared interests of stakeholders are realized by educational administrators who sustain something of a traditional moral vision of education (Noddings, 2004). This is a vision that combines the commitment to seek social justice through inclusion of all through critical dialogue and an unrelenting search for shared truth (Wagner & Simpson, 2009).

To the extent that educational administrators shrink from advocating development of characteristics in students such as respect for others, strength of character, passion of truth, and so on, they, even more so than attorneys, risk being discredited in the public eye as professionals (Rich, 1984). Educational administrators who slide into legalistic preoccupations with sanctions and managerial efficiencies above all else, appear increasingly guild-like to stakeholders. But educational administration is not a guild, and stakeholders both in and out of education can be expected to seek a different breed of administrator.

What that new type of administrator might look like is uncertain. From the guild-like viewpoint, the new administrator should be more expert in logistics, accounting, operational efficiency, and/or legal knowledge rather than training in the professional vision of the educator's ultimate mission (Matthews, 2008). From the more intuitive vantage point of much of the public and many school teachers themselves, the new administrative type ought to exhibit a renewed commitment to student intellectual, social, aesthetic, and emotional development. For example, there already is a movement afoot to replace professional educational administrators with members of the professionalized guild of MBA's or attorneys. Rice University initiated a new hybrid program in 2008, wherein prospective educational administrators receive an MBA along with special training pertinent to learning *measurements* in the environment of No Child Left Behind. They also get additional training in the logistical operations of school and district management (Matthews, 2008). What is likely to go missing in any such hybrid, however, is the identifying focus of educational professionals on matters of social justice and bringing students into the shared search for truth and understanding.

Training programs in educational administration, unlike training

in management and law, must focus attention fully on the *dual* educative and schooling missions of public education (Grosso-Deleon, 2006). Certainly most well trained administrators can manage the schooling mission of public education. Administrative talent is necessary to keep accounting ledgers in order, busses running on time, effectively schedule school activities, respond to government-mandated Equal Employment Opportunity Commission (EEOC) training, and all the rest that goes with schooling practices. However, the educational administrator alone has specific training in the ethics of educational leadership, specifically in the inclusive moral vision of bringing together all stakeholders in one Great Conversation of Humankind. (Again, keep in mind conversation is conversation and not the download of a culturally specific canon.)

Moreover, the professional training of a truly educational administrator prepares administrators to do more than just keep the lid on things or present an attractive presence to the public. The training in ethics of the educational administrator involves skills at showing the public what education is about and why school budgets should allow for *educational* planning to drive discretionary budgeting as a priority. For the truly professional educational administrator, even course work in school law should be driven by the awareness that educational administrators will need to wrestle with an understanding of what it means to be *in loco parentis* today, how to respond to new demands for inclusion (Wagner & Lopez, 2011), and so on, all with an eye to bringing all stakeholders forward in both individual and collective development. In contrast, a course in school law taught merely from the perspective of a trained lawyer will go no further than laws and precedents that can lead to costly litigation.

The professional educational administrator must seek a much more ambitious and professionally stimulating curriculum than one limited to institutional efficiency and litigation posturing. In short, one should be able to go through nearly every course in the standard curriculum for educational administrators and see where the content must distinguish *schools* from other forms of organization. Appropriate training of administrators in general need not clash with training appropriate to educational administrators in particular. Educational administrators need administrative skills and training, but they must be trained within the tradition of their profession and not in some generic craft of so-called “managerial skill” (Cuban, 2007). The training of educational administrators in accounting, organizational efficiency, human resource management, the law and agency regulations must be extensive, and it generally is for educational administrators. However, in each case, for such training to be effectively exploited by practicing

school administrators, the focus on the *educational* mission must be sustained and manifest.

### **From Legalisms to Moral Vision: Schooling and Education**

The distinction between schooling and education has a long history. Mark Twain's famous quip, "I try to keep schooling from interfering with my education," is memorable not just for its characteristic humor but also for the subtle but powerful point it makes. Schooling is about organizational efficiency, socialization, and enculturation of students. Education depends on the effectiveness of schooling, but in the end education is about so much more.

Accountants, attorneys, and other specialists are often hired to work for educational administrators in major school districts, and sometimes it seems as if the tail is wagging the dog. This happens when educational administrators mimic those who are hired to provide specialized but limited advice to educational administrators. For example, by simulating legal thinking, as opposed merely to consulting legal counsel in relevant situations, administrators may drift into reactive and defensive postures. Whereas educational leadership is intended to be proactive and forward-looking, legal thinking is based on precedential reasoning aimed at either averting or fighting litigation. Educational administrators who rely on counsel for direction rather than advice tend to find themselves assuming a "circle the wagons" mindset, often putting distance between themselves and the stakeholders they are meant to serve.

Leadership that obsesses on sanctions and litigation becomes more than timid; it becomes impotent (Cuban, 2007). Administrators who fulfill their professional mission as educators exhibit more than skills of operational efficiency and legal defensiveness. The most professional administrators bring value into the world by organizing the pursuit and inclusive sharing of truth (Wagner & McEnery-Benavente, 2006).

As Noddings (2007), Egan (2011), and so many others point out, education again, as opposed to the diversity of local commitments common to schooling, aims at shared, truth-seeking cooperation among all stakeholders. Education, again in contrast to the local tastes evident in schooling concerns, aims at epistemic robustness, equity, and social justice. Education secures epistemic robustness by drawing attention to the big questions and investigatory tools for pursuing them in every discipline. Educators keep the process on track by honoring and even encouraging again and again every participant to ask the questions; "How do you know X?" and "What do you mean by the term X?"

Education should be the most inclusive of all organized social en-

gagements. It simultaneously fosters competitiveness in the open search for truth as well as acceptance of criticism in its shared and unrelenting search. It is this moral vision that makes schools, districts, and systems into something more than merely large organizations for systematic enculturation of the masses to the will of a sovereign (Bottery, 2001). It is this moral vision that realizes authentic education such as Mark Twain might value. Schools cannot avoid schooling and the legalistic constraints on their operational management. But educational administrators should never neglect their schools' mission to educate, for therein lies the manifest and identifying moral vision of the educational professional.

### **When Schooling Legalisms Distract from Moral Vision: Two Examples**

The law directs educators to report cases of suspected child abuse. The law even goes so far as to impose criminal sanctions for failure to report cases of suspected child abuse. And it goes further yet protecting educators from any good faith report, even if it turns out there was no abuse. This all sounds pretty straight forward. Unfortunately all depends on an ill-defined term *suspected abuse*.

Some people are more suspicious than others by nature. In addition, suspicions may increase to the extent that one has acquired knowledge of such incidents in the neighborhood within which they work. Similarly, reasonable suspicions may be neglected if the educator believes herself to be working in a safe and very proper neighborhood. Here especially are situations in which professionals need to be sensitive to the fact that statistics describing a population do not make Henrietta's bruise more or less likely a case of abuse or neglect.

In Columbia, Missouri, a number of years ago a fourth grade teacher working at a school in one of the more socio-economically challenged neighborhoods in town reported to her principal a case of suspected child neglect. Rather than risk any legal problems, the principal immediately contacted the State's local Social Services office to report the *suspected* abuse the teacher reported. A social worker was immediately dispatched to the school. The social worker reported to this author personally the following facts.

The child who was the suspected object of neglect was a member of a family of six. He showed up in school one cold and wintery day wearing corduroy pants, a flannel shirt, sweater, parka, mittens, heavy skating socks, long underwear beneath it all, and rubber galoshes. Beneath the galoshes the child was wearing no shoes. Since the child was wearing no shoes, the teacher *suspected* child neglect. The annoyed investiga-

tor opined that either the teacher or the principal could simply have allowed the child to wear his galoshes and sent a note home or called the parents and advised them of the absence of shoes. Moreover, this was a first incident for this child to show up improperly prepared for school. The educators involved in this case, untrained in the law but aware of the requirement to report cases of suspected child abuse *or else*, immediately went into defensive posture, alarming an innocent family, wasting the State's resources and, most importantly, sacrificing their own professionalism. Focus on the letter of the law rather than on its purpose and the purpose of the profession can lead professionals astray, as happened in this case.

Actions of school authorities inevitably have reverberations extending far beyond risk of litigation. There are consequences, perhaps unintended but consequences nonetheless, for all who become the object of inept assessment by those educators the unempowered are dependent upon.

In Houston, Texas, a number of years ago, a "Business Woman of the Year," when interviewed on television, spoke of her experience with incest some 30 years before. She explained that at 11 years old she told school authorities of her father's predatory behavior. Since the school was on a military base and her father was one of its highest ranking officers, the school called him directly and told him the awful things she had said. He never again spoke to her, but at least he never again molested her. Clearly, as this case shows, there is a need for laws to protect the unempowered and a need for administrators to act in behalf of the unempowered (Lortie, 2002). Although this case arose decades before the law requiring reports of suspected child abuse was ever passed, surely a more professional educator would have done more than simply call an alleged predator father and betray an eleven year old girl. In short, with or without legal requirements, professional administrators must address a range of responsibilities on behalf of students that is neither prescribed or proscribed by law.

The professionalism of educators cannot be adequately captured in any laws, codes, regulations, or policies. Such directives must always be seen through the prism of one's professional commitments and duties. True professionalism requires more moral commitment than can be secured by the threat of sanctions. For example, as the Texas woman herself opines in light of her volunteer work with Child Advocates, administrators too quick to report cases of suspected abuse will do much damage to the ability of the unjustly reported family to provide strong direction and support to a normally developing child. Similarly a child neglected by the system, as was she, who will suffer and develop skills to fend for herself in what she perceives to be a hostile and unsus-

portive world. Such children grow into adults who have grave difficulty trusting and working with others. Childhood abuse creates a lifetime of challenges. Abuse simply is not something one grows out of or gets use to. At best, one simply learns to accommodate the previous deforming abuse. Maybe, if addressed early on, a victim of abuse can have a better chance at recovery. However, this hope for early intervention must not come at the price of reckless and premature invasion by the state into otherwise healthy households.

To serve the moral vision of their profession, educational administrators must exercise courage from time to time. It sometimes takes courage to call authorities on behalf of a child in suspected child abuse cases, and it sometimes takes courage to refrain from defensive action for fear of consequences to self rather than consequences to the child, as each of the two cases above show. These cases are not matter of simple legal interpretation. Each is, at the very least, essentially a matter of personal and professional morality. Moral matters cannot be dissolved by playing one's cards close to the vest and pretending that the law dictates any and all things that should matter to a responsible administrator.

Each of the examples above exhibits the unprofessionalism of a "circle the wagons" way of thinking. In the latter case the school authorities forewarned the father rather than helping the girl. They did this most likely to protect themselves from having to deal with his authority. Similarly, in the "no shoes in the galoshes" case there seems to be a similar timidity and focus on self-interest rather than on the well-being of the student. Professionalism in educational administration must summon greater courage, integrity, and other non-sanctionable elements of true professionalism.

### **A Bonus of Moral Vision: Often Leads Away from Unnecessary Litigation**

No one can doubt that the nation's schools exist in an increasingly adversarial environment. For example, the greatest source of successful litigation against institutions of public education today in the United States has to do with matters of inclusion as specified in the Individuals with Disabilities Education Improvement Act (IDEIA) legislation and subsequent case law (Zirkel, 2002). Nonetheless, this is no reason to turn to thinking like a lawyer when setting school policy. Defensive posturing may offer some protection from such suits, but proactively seeking ever greater inclusion makes defensive posturing relatively unnecessary. Just as in the case of the girl who reported her father's predations, with or without the law, educational professionals should

have acted to protect the child. With or without legal direction, shared moral sympathies among professional educators should lead always to ensuring inclusion of all students in the benefits of education.

Protecting school funds from litigation is similarly an important administrative function. Savvy administrators should indeed seek legal counsel to avoid unnecessary litigation. However, whereas counsel will focus on defensive posturing of the client's exposure to litigation, the educational administrator must keep in mind the idea that the first order of business is furthering the cause of education.

In short, counsel is hired by school boards to protect against costly litigation. In contrast educational leaders are professionally committed to a very different and more proactive direction (Kuhn, 2008): To secure inclusion for all, and this may mean at times undertaking costly personal risks on the behalf of students. Only the educational leader, of course with advice of counsel at hand, can determine what counts as reasonable risk.

Educational administrators who sacrifice their shared sense of moral vision and instead manage entirely on the basis of codes, rules, standards, and laws will find their credibility increasingly diminished in the eyes of peers, subordinates, and other stakeholders in the educational system (Rosenholtz, 1991). And, just as the law cannot substitute for the moral vision of professional educators, neither can management expertise substitute for such moral vision. Lawyers may be in danger of losing their own sense of professionalism by drifting further away from the rationale offered for their existence by Aristotle and the German Bar's Rule Three, namely to bring ever greater civility to society. Clearly educational administrators could bring the same risk upon themselves by mimicking the increasingly sanction-based worldview of the American Bar Association. Educational leaders are well-advised to keep counsel available but never mimic or otherwise substitute legalistic (or guild-like management strategies) for the positive direction inherent in the educators's traditional moral vision.

The four traditional professions have all been service based. Teaching, perhaps more than any of the other three historic professions, must stay resolute in its service-based orientation if it is to continue to be credible in the eyes of an increasingly cynical public. Moral vision, not codes and sanctions, is what makes educational administrators irreplaceable professionals.

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