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LOYOLA UNIVERSITY CHICAGO

PERCEPTIONS OF THE EVOLUTION OF THE ROLE OF
THE BOARD OF EDUCATION ATTORNEY IN NORTHERN ILLINOIS:
SELECTIVE BIOGRAPHIES, 1945-1990

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE SCHOOL OF EDUCATION
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF EDUCATION

BY

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PERCEPTIONS OF THE EVOLUTION OF THE ROLE OF
THE BOARD OF EDUCATION ATTORNEY IN NORTHERN ILLINOIS:
SELECTIVE BIOGRAPHIES, 1945-1990

The purpose of this dissertation is to examine the evolution of the role of attorneys representing school boards from the perspective of the careers of three attorneys, Louis Ancel, Justice Anthony Scariano, and Allen Franke.

Chapter I is a prologue in which the role of attorneys representing school boards is reviewed. It concentrates on what school boards can expect from attorneys, how they may be used as advisors, and ethical concerns.

Chapter II is devoted to Appellate Court Justice Anthony Scariano. It traces his beginning in politics, law, and, finally, his specialization in representing school boards. He discusses the role of school board attorneys and the relationship of segregation issues, religious issues, labor unions, special education, and various economic pressures on the role.

Chapter III reviews the career of Mr. Allen Franke, his involvement in school law and how the development of teachers' unions as well as special education legislation were related to the evolution of the role, according to his perception.

In Chapter IV, Mr. Marvin Glink discusses his association with his partner, Mr. Louis Ancel, and the role of school board attorneys in the early sixties, religious issues, teacher negotiations, special education, and liability.

Chapter V addresses current trends in the field of school law.

Chapter VI is a summary and conclusions.

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VITA

The author, Thomas M. Zafiratos, is the son of Chris and Georgia (Stasinos) Zafiratos. He was born in Chicago, Illinois on April 13, 1951.

His elementary education was obtained at the James G. Blaine School in Chicago, Illinois. He received his secondary education at Oak Park-River Forest High School in Oak Park, Illinois. In June 1973, he was granted a Bachelor of Science Degree in Psychology from Loyola University of Chicago. He received a Master of Arts Degree in Special Education in August 1976 from Northeastern Illinois University.

The author began his teaching career at Union Ridge School District 86 in Harwood Heights, Illinois, where he served as Unit Leader for his grade level and was a member of the Superintendent's Instructional Improvement Committee. While teaching at Union Ridge, he attended Concordia Teacher's College in River Forest, receiving his administrative certificate in 1978. In August 1978 he became a special education coordinator and, later, the administrative assistant of the Leyden Area Special Education Cooperative in Franklin Park, Illinois. In May 1992, he was inducted into the Loyola Chapter of Phi Delta Kappa. In July 1992, he was appointed superintendent of Pennoyer School District 79 in Norridge, Illinois.

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CHAPTER I

PROLOGUE

The role of attorneys representing school boards has evolved over the years. Using selected biographical sketches, this study concentrates on the period from 1945 to 1993. The changing role of attorneys will be examined from the perspective of three pioneers in the field of school law in the state of Illinois: Anthony Scariano, Allen Franke, and Louis Ancel. This chapter will focus on aspects related to school attorneys such as what school boards¹ can expect from attorneys, how they may be used as advisors, as well as ethical concerns.

School boards can expect that attorneys will provide them with legal counsel and representation in the daily educational and business affairs of the school district. Preventive law can be less expensive than litigation. The major areas in which the school attorney may be involved include constitutional law, torts (negligence, unintentional or intentional acts of liability), review of contracts, bid specifications, assistance in the preparation of notices, litigation in the courts or before state administrative tribunals, assistance with employee

¹The terms "school board" and "board of education" will be used interchangeably throughout this dissertation.

dismissals, local government law (including zoning), labor law and negotiations, copyrights, condemnation, federal law and dispute settlement negotiations.²

School board members must be guided from the perspective that an attorney representing a school district should not be viewed as a policy maker or as an administrator. Instead, as a legal advisor, an attorney will serve a school district in the best manner by working on the preparation of legal opinions, defining legal problems, and generating alternatives for the board and the superintendent to consider.³

In regards to the question of how often a superintendent should be in contact with the attorney, frequent informal contact is appropriate and it is always a good idea to develop a procedure in which an attorney reports to a school board through the superintendent. School board members serve their districts to the best possible extent when it is clearly understood that they are board members, not school administrators. Decisions made by people working closely with children are usually the best kinds of decisions and all parties involved in the operation of schools will do well to keep that concept in mind. Good communication between the school board attorney, the

²Edgar H. Bittle, The School Attorney: A Practical guide to Employing School District Legal Counsel, NSBA, 1986, 1.

³Ibid., 4.

superintendent, and the members of a school board is important and can be accomplished in a cooperative manner.

It is important that the entire professional relationship regarding the school district attorney and the school district be clearly stated and understood. For example, most attorneys representing school boards are paid by the hour. A school administrator and an attorney should have a clear and mutual understanding about the amount of compensation that will be involved in any particular situation in order to avoid misunderstanding.⁴

Selecting a School Board Attorney

According to Bittle, certain criteria should be met when a situation arises in which a school district attorney needs to be selected:

1. Does the attorney have a genuine interest in the cause of education?
2. Does the attorney have an intimate knowledge of the provisions of the education laws of the state?
3. Is the attorney familiar with the interpretations of those laws set forth in the decisions of the courts and other administrative agencies which affect education?
4. Is the attorney familiar with the rules and regulations of the state board of public instruction?
5. Is the attorney knowledgeable in the preparation of contract documents, specifications, notices to bidders and bidding procedures?

⁴Ibid., 5.

6. Does the attorney have a familiarity with public law generally since the board of education is subject not only to the provisions of the education law but also to those of other public laws as wells?
7. Is the attorney knowledgeable in the filed of administrative law since such procedures are applicable to boards of education?
8. Does the attorney have experience as a trial and appellate lawyer or an association with one because there will be a need to represent the board in litigation and in hearings?
9. With the tremendous increase in demands being made by teachers, is the attorney prepared to participate in negotiations, able to draft agreements with teachers, and qualified to participate in arbitration hearings?
10. Is the attorney active in organizations which specialize in the study of school law such as the state Council of School Board Attorneys, the National Organization on Legal Problems of Education, and the Council of School Board Attorneys of the National School Boards Association?
11. Does the attorney maintain a close personal relationship with other school board attorneys to benefit by the constant interchange of ideas which can only benefit the board?
12. Does the attorney keep abreast of proposed legislation and changes in existing legislation?
13. Does the attorney keep the board informed of the effects of important decisions of the courts and decisions of other administrative agencies which affect education?
14. When called upon to render decisions, are the decisions based upon the attorney's understanding of the law and not tailored to meet the desires of the board or any member thereof?
15. If the attorney becomes aware of practices of the board which are not consistent with the law, does the attorney diplomatically call upon the board to cease and desist from such practices without regard to whose toes may be stepped on?

16. Although the attorney should not attempt to formulate policy, if board policy is found to be contrary to law, does the attorney so advise the board and recommend proper legal policy?
17. Is the attorney familiar with the principles of parliamentary law frequently called into play during the course of board meetings?
18. Does the attorney know when to advise a board to stop public discussion in certain areas and to recommend discussion in executive sessions in areas that are sensitive and that could lead to trouble?
19. Does the attorney maintain close liaison with the board secretary or school business administrator in order to be aware of what is going on in the system?
20. Does the attorney make such recommendations that will lead to smoother and more efficient operation of the school system from a legal point of view?⁵

Of course this list should not be considered to be all inclusive. However, it can be helpful in focusing on areas that are important when school districts are making decisions regarding the kind of things to look for when selecting an attorney.

One of the most important issues to keep in mind is that it is not advisable to rely on a school board member, who also happens to be an attorney, for legal advice. It is necessary to remember that the role of a school board member is to participate with other members of the board of education in setting policy. It is not appropriate to request that a board

⁵Ibid. 6

member serve in the capacity of legal counsel to the board of education. Also, one must consider the fact that a conflict of interest could arise if the firm of a board member, or the board member, is paid to offer legal advice.⁶

For the most part one of the best things that an attorney can do for a school board is to assist the board in such a way that legal problems are avoided. Attorneys can best serve their school districts by practicing preventive law. One way that this is possible is to have a school board in place that is being guided by a superintendent who is aware of the concept that it may be better to consult an attorney before a problem develops to the point that litigation cannot be avoided.

An interesting aspect of working in a school district is that when issues develop there often times are hidden agendas that are really quite difficult to identify, that motivate people to act in a certain manner. When an attorney representing a school board is consulted regarding such issues, it is important that the attorney be alert to the fact that hidden agendas do at times motivate people to act in a certain manner. For example, "skilled players of the bureaucratic game have an amazing ability to mention casually, an issue, solicit the attorney's view, and then state that the matter has been reviewed with the school district's attorney who is said to completely agree with the

⁶Ibid., 7

position advocated."⁷ An experienced, seasoned attorney can avoid these types of traps by refusing to offer an opinion unless all the facts of an issue are understood and the motivation behind them has been considered. These situations are not to be confused with rendering appropriate legal advice. These situations often arise with regard to policy decisions and attorneys need to be careful in this area because developing policy is the responsibility of school boards.

In-house vs. Outside Counsel

An interesting question to ponder when thinking about attorneys who represent school boards is to consider the idea of in-house counsel as opposed to the retention of an outside law firm. Certainly the size of a school district is one of the factors that needs to be considered. In any case, both having in-house counsel and retaining outside law firms have their advantages. William A. Anderson, Superintendent of Schools in Des Moines, Iowa, points out that in-house legal counsel is usually able to:

1. Know the client's needs best, particularly in matters of governance and policy.
2. Be more readily available for consultation.

⁷Ralph D. Stern, "The Role of the School Attorney in Policy Matters," The School Attorney: A Practical Guide to Employing School District Legal Counsel, Edgar H. Bittle, ed. NSBA, 1986, 10.

3. Provide institutional continuity and depth of experience in handling problems of a recurring nature.
4. Be more effective in marshalling governmental assistance and in handling matters of administrative law and procedure.
5. Provide more knowledgeable guidance in planning steps to prevent legal problems in institutional matters.⁸

Anderson continues:

The employment of a law firm on an hourly or retainer basis . . . usually means the district's attorney will:

1. Be more knowledgeable and adept in matters of courtroom practice and procedure.
2. Have ready access to more extensive legal library facilities although this may become less significant with the advent of computer-assisted legal research.
3. Be able to marshal more lawyers in matters of crisis.
4. Provide specialists for skilled consultation on highly specialized matters of law.
5. Be considerably less expensive than in house counsel. District costs per year for employing outside counsel have averaged only one-third to one-fourth the costs of the legal services provided other educational institutions, with budgets of \$50 million or more, which employ an in house attorney.⁹

⁸William A. Anderson, "Pros and Cons of Providing In-House Counsel as compared to retaining an Outside Law Firm: A Superintendent's Point of View," The School Attorney: A Practical Guide to Employing School District Legal Counsel, Edgar H. Bittle, ed. NSBA, 1986, 23.

⁹Ibid., 24.

There are several basic concepts that need to be understood by individuals who will interact with attorneys representing school boards. School board members and school administrators, especially school superintendents, need to be familiar with and aware of these concepts. For example, common law is case law or judge-made law rather than legislative or constitutional law.

Stare decisis refers to the tendency to obey precedence with regard to a court's decision. This type of procedure tends to make law predictable and fair. With regard to the federal constitution, the First Amendment covers such issues as free speech, freedom of religion, establishment of religion, and peaceful assembly. The Fifth Amendment guarantees that the federal government cannot take away life, liberty, or property without due process. After the Civil War the fourteenth Amendment guaranteed that the states could not take life, liberty, or property without due process. It is important to keep in mind the fact that the Fifth and Fourteenth Amendments apply only to relationships between governments and individuals, hence public schools.

In our legal system there are levels of law which must be understood by people dealing with law related issues in school systems. There is constitutional law, there are statutes, and there are court decisions. Court decisions are comprised of common law and equity law (compensatory law). Then, there is administrative law. Administrative law is developed by agencies such as the Illinois State Board of Education and district policies.

A brief description of our court system is helpful in providing clarity in terms of understanding the system in which school district attorneys work. First of all, the federal court system includes the United States Supreme Court. The next level in the federal court system is the Circuit Court of Appeals. There are also district courts in the federal system. At the state level there is a state supreme court, the appellate court, and the circuit court. In both systems, cases usually start at the trial level courts (the district court at the federal level and the circuit court at the state level). If there is a conflict between federal and state law, federal law prevails.

Ethical Considerations

With regard to the relationship between school boards and attorneys representing school boards, it is important that an understanding of ethical issues be stressed for the benefit of all parties involved. There are conflicts and dilemmas that are inherent in the role and relationship in which attorneys representing school boards find themselves. First, there is:

1. The conflict between the role of the school attorney as prosecutor or advocate and his role as advisor to the board in its judicial capacity in the same case
2. The ethical dilemmas in representing a new board's changed legal stance

3. The conflict inherent in the joint representation of a school district, individual board members and school employees.¹⁰

In situation number one, mentioned above, an attorney representing a school district, for example, in a case being conducted against a teacher may later have to advise the board with regard to a final judgment in the teacher's case with as to whether or not the teacher should be retained or dismissed. In this type of case, "the attorney must inform the board that there may well be an inherent conflict in assuming all those roles for the same client . . . the district must decide whether it wants another independent attorney to fill the other roles or wants to forego legal representation in that situation."¹¹

In the second situation regarding possible conflict of interest as a result of the formation of a new board, the attorney must make it clear to the board and the administration that he or she represents the entire organization and "loyalty is owed primarily to the whole, not to its parts."¹²

In the third example, the issues involved in a conflict which might arise as a result of representation of individual district employees and board members was cited as an ethical concern. There is no problem in this area

¹⁰Martin Semple, "Ethical Considerations in School Board Representations," The School Attorney: A Practical Guide to Employing School District Legal Counsel, Edgar H. Bittle ed. NSBA, 41.

¹¹Ibid., 44.

¹²Ibid.

unless the position of one of the attorney's clients differs from the position of everyone else. For example, "A lawyer may represent several clients whose interests are not actually or potentially differing" ¹³ But "he must defer to a client who holds the contrary belief and withdraw from representation of that client." ¹⁴

This information is valuable and needs to be considered carefully. Boards of Education can expect attorneys to provide them with legal representation that includes expertise in constitutional law, torts, contract law, bid specifications, assistance in preparation of notices, litigation, local government law, including, for example, zoning, labor law and negotiations, copyrights, condemnation, federal law, dispute settlement law, and all of this service must be provided from within the framework of an ethical perspective.

The role of attorneys representing school boards has not always been so extensive. In fact, the role has evolved over the years, and in many ways the changing role of attorneys representing school boards has had a correlational relationship to historical changes that have developed over the years in our society.

In the chapters that follow, the evolution of the role of attorneys

¹³Ibid., 46

¹⁴Ibid., 46.

representing school boards will be examined from the perspective of their attorneys. The three attorneys were chosen because they are considered to be pioneers in the field of school law. Mr. Anthony Scariano, Mr. Allen Franke, and the late Louis Ancel are the three people whose views will be studied.

These particular individuals were interviewed using open-ended questions which were designed to bring out relevant information. In situations in which the attorneys tended to be too general in their responses, they were asked to relate specific instances that stood out in their memories. This technique was helpful in eliciting information.

Today, Anthony Scariano is an appellate court justice in Cook County. Chapter II focuses on his perceptions and views regarding the evolution of the role of school board attorneys.

CHAPTER II

JUSTICE ANTHONY SCARIANO

Anthony Scariano was born in Chicago, Illinois, on January 12, 1918. His parents were born in Italy (in Sicily), and, after coming to the United States, supported their family by working as unskilled laborers. In his memoirs, Mr. Scariano described his father as an unskilled laborer, doing a variety of things. "He cut meat. He was a butcher. I guess people coming from his part of Italy knew how to slaughter and dress animals. I wouldn't call them skilled at it . . . He worked in a candy factory as a laborer. Ultimately, when he died, he was a sleevepresser."¹

His father died in 1928 when Scariano was ten years old. In his memoirs he discussed early recollections about his father. He remembers that "he spoke broken English . . . was very fond of books and reading; he went to night school to learn the language. He went to adult education classes, became a citizen as soon as he was eligible."²

¹Anthony Scariano, Memoir, vol. 1 (Legislative Research Unit: Springfield, Illinois, 1988), 1.

²*ibid.*, 2.

It seems that the result was not only did his father learn about his adopted country, he also instilled a love for learning and the feeling that school was important to his young son.

Mr. Scariano's mother was also born in Sicily. Her maiden name was Imburgia. She emigrated to the United States with her family when she was three years old. He described his mother's family as "unskilled laborers. My grandfather worked in the streets . . . paving, repairing them . . . ultimately wound up working for the Chicago, Milwaukee, St. Paul as a section laborer . . . in between those jobs he was also a fruit and vegetable peddler."³

From the time he was a young child, Mr. Scariano was used to seeing the adults in his life work very long, hard hours. In those days, they used to have quite long laboring hours; the ten or twelve hour day was not uncommon. Speaking of his father, he said " . . . He'd come home after a bad day--it might be snowing, sleet, rain outside and he'd come home and we used to help him pull off his field boots . . . we used to take turns, one holding him and the other one pulling his boots off."⁴

As a youth, Mr. Scariano lived in the Grand, Halsted and Milwaukee area of Chicago, a neighborhood where everybody was a laborer. There were no professional people, they lived outside his neighborhood " . . . but came

³Ibid., 4.

⁴Ibid., 7.

to practice . . . they were affluent enough to live in more comfortable surroundings. And I guess they didn't want their kids to grow up in that kind of neighborhood. That's one of the anomalies of growing up in a neighborhood that builds character. You don't want your children to build the same kind of character."⁵

After grade school Anthony Scariano attended Lane Technical High School for two years and eventually was graduated from Wells High School in Chicago.

As a young man growing up during the F.D.R. era, Mr. Scariano explained that he became interested in politics " . . . largely through F.D.R. He captured my imagination the way he did a good many other people of all ages."⁶ It was the depression era. People were out of jobs and were desperately trying to survive.

As a college freshman, Anthony Scariano attended Illinois College in Jacksonville in 1938. After one year at Illinois College, he transferred to the University of Illinois in 1939 and then to George Washington University, in Washington, D.C., in 1940. He was graduated with a B.A. degree in political science in June of 1942. His attendance at George Washington University provided him with a broad background. "We had great courses in

⁵Ibid., 9.

⁶Ibid., 23.

comparative government . . . We studied the Soviet system, Germany, England, and France, all of the modern European countries"7

In December of 1942 Mr. Scariano was drafted and served in the Army during World War II. He was discharged in November of 1945. In November of 1948, after completing his course work at Georgetown Law School, he passed the bar. In April of 1949, Mr. Scariano became an assistant U.S. attorney in Illinois. He described the circumstances by which he acquired that job:

I was working for Senator Scott W. Lucas in Washington and I remember quite distinctly it was right around Memorial Day in 1948, the year I was to graduate from Georgetown Law School. And he asked me what I was going to do. And I told him I was going to go back home. He said, "well why don't you stay in Washington? Maybe because of your interest in labor law you could get a position with the National Labor Relations Board."⁸

Mr. Scariano was not interested in that particular kind of position. He was, however, interested in pursuing a position in the U.S. Attorney's office in Chicago. Senator Lucas was able to help. "He called Otto Kerner and asked him if he had any vacancies. Otto said 'yes, I do . . . as a matter of fact one of our assistant U.S. Attorneys just suffered a nervous breakdown.' I thought that was quite a quaint introduction to the office."⁹

⁷ibid., 55.

⁸ibid., 74.

⁹ibid., 75.

Mr. Scariano worked in the U.S. Attorney's office until 1954. He became a Democratic precinct captain, and, in 1955, he was elected to the state legislature as a Democrat. He was named to the education committee of the House of Representatives and soon began working as a school attorney.

One can see that Mr. Scariano was especially industrious and certainly was not a stranger to hard work. As a young man, his interest in politics was first ignited by President Roosevelt; this was not an uncommon occurrence according to Mr. Scariano. As he grew older, he retained his interest in local government and politics. As was the case with so many other people of his generation, his plans for the future were temporarily interrupted by World War II.

The interest that Mr. Scariano first developed in politics and government did not diminish as time passed. He soon developed an interest in law and began his career as an attorney after completing law school. The world was a different place at that time and so was his profession. During a personal interview, Mr. Anthony Scariano spoke about the field of school law in the early days. "In the beginning, local lawyers handled local problems. They were municipal lawyers and they really started with nothing."¹⁰

¹⁰Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

It is interesting to note that the advent of the practice of school law as a full time area of specialization is a relatively recent phenomenon. "Twenty five years ago, only a few people specialized in school law. The Illinois School Board Association encouraged more people to get into it. More were needed. In the beginning school districts in need of legal representation used tax attorneys, divorce lawyers, and municipal lawyers."¹¹

School Law in the Early Years

In the middle to late 1940s attorneys working in education were not specifically or exclusively working as school attorneys. Anthony Scariano began practicing law over forty years ago in 1949. Today he is an Appellate Court Justice in Cook County, Illinois.

Initially he was working in Washington for Scott W. Lucas, a United States Senator from Illinois who helped him get into the U. S. Attorney's office. Otto Kerner was the U.S. Attorney at the time and Mr. Scariano became an assistant U.S. Attorney for five years. He stayed until 1954.¹²

Mr. Scariano would go on to become an attorney who specialized in representing school boards, but that would not occur until much later in his career. The important thing to keep in mind is that, in the beginning, attorneys who later went on to represent school boards did not begin their

¹¹Ibid.

¹²Ibid.

careers as school attorneys. Mr. Scariano went to the legislature and was put on the education committee of the House. "I began to acquire a little proficiency in educational law, not only with respect to the bills we were handling, but you had to get background, and you had to get history to fit the pieces in. Whatever we were working on, you had to see that it fit into the school code, so I learned quite a bit about school law."¹³

Attorneys representing school boards solely prior to 1960 were not needed to any great extent during that era. According to Appellate Court Justice Anthony Scariano, they didn't have much to do in the old days. "They would be called in for a bond issue, they would be . . . called in for a contract with regard to a supplier of material . . . to build a building . . . repair . . . remodel a building, that sort of thing."¹⁴

At the time when school law was just beginning most lawyers were involved in other aspects of the law. Mr. Scariano remembers that lawyers like Harold Norman, and Franklin Kline, and Lou Ancel were doing a lot of other things. School law was a drop in the bucket. They represented businesses. Franklin Kline was, and still is, an important figure in bank law, representing many banks. Harold Norman represented corporations and commercial establishments. School law was just a sideline for them. "Harold Norman got

¹³Ibid.

¹⁴Ibid.

started only because he was a school board member, and started the school board association . . . he took Allen Franke into his firm to help with the school law, and then Allen Franke took over the Harold Norman law firm."¹⁵

Segregation Issues

In the early 1960s, much of the civil unrest that had been building for decades seemed ready to come to the surface. Attorneys became involved in segregation issues. Segregation affected those districts that had both minority and white students. Mr. Scariano was called into Chicago Heights and into Maywood. The Chicago Heights case and the East Aurora case were memorable. He represented Chicago Heights. The two cases came up together and the state superintendent got involved.

The state board of education got involved because it enacted guidelines that specified that if you had a certain percentage over or under their guidelines with respect to Blacks, for instance, you had to redraw your district lines. That was in the early sixties, about 1961 to 1963. Ray Page, when he was state superintendent, didn't bother too much with it and neither did his predecessors. When we went into the State Board of Education, and when we amended our constitution, and we abolished elected state superintendents, then the state board began to move in that field. East Aurora and Chicago Heights were state cases. The Maywood case was a federal case. So we began to get active as lawyers in the field of segregation.¹⁶

Based on events occurring in the area of civil rights, which were then gaining national attention, we can see that the role of attorneys representing school

¹⁵ibid.

¹⁶ibid.

boards was changing and expanding in a correlational manner with regard to these events. As Mr. Scariano said: "We began to get involved as lawyers in the field of segregation."¹⁷

The role of attorneys representing school boards was expanding and eventually the field of school law as an area of specialization would grow to the extent that it would someday be extensive enough to support full time attorneys working directly and exclusively in that particular area of expertise.

Mr. Scariano went on to discuss the manner in which the role of attorneys representing school boards was changing. In the beginning, as we now know, many were municipal lawyers who only dabbled in school law as a very small part of their total practice. As conditions in our society changed, the role of school board attorneys changed as well. Originally, the Ancel firm was very active in municipal law, representing cities and villages. Then they went into schools and were representing both schools and municipalities. "They had the west suburbs; Kline had the south suburbs; Harold Norman had the north suburbs; and I came in as the interloper and we spread out all over. We didn't pay any attention to boundaries or who was who. If they wanted us, we were there."¹⁸

¹⁷Ibid.

¹⁸Ibid.

The fact of the matter is that school districts did begin to want attorneys representing their school boards 'to be there' more often. What was once a part time sideline was becoming a full time area of specialization. During the month of April 1968, students at Columbia University who had occupied several buildings at the university as a form of protest were finally removed, but only after a whole week had gone by. The students were removed by police and the aftermath of the event left 150 people injured.¹⁹ Student unrest would spread throughout the nation and, eventually, a real tragedy unfolded at Kent State University in the spring of 1970. Some students at Kent State had joined in a national student strike to protest the entry of American troops into Cambodia. A group of protesters set fire to the campus ROTC building and prevented firemen from putting the fires out. The incident at Kent State was followed by two more tragic deaths at Jackson State College. The governor of Ohio ordered National Guard troops to the campus. During a confrontation with rock throwing students, guardsmen at Kent State fired on the crowd and killed four. A week later, two black students were killed at Jackson State College in Mississippi. The tragedies at Kent State and Jackson State sent shock waves throughout the nation.²⁰

¹⁹William Benton, The Annals of America 1961-1968 (Encyclopedia Britannica, Inc., 1968), 674.

²⁰Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc.), 306.

The Sixties

Due to the unrest of the 1960s, cases over discrimination became more common. During our interview, Appellate Court Justice Anthony Scariano expressed his views regarding the role of attorneys representing school boards and the relationship between changes in the role and Viet Nam, the counter culture, and minority issues:

. . . For instance, schools began to get after students and their teachers regarding their dress and grooming. Well, this was the Viet Nam era, and there was a certain amount of independence in the air . . . everybody was taking advantage of it. Women's lib was coming in . . . women began to assert themselves, they felt that men were getting favored positions. They were getting the jobs . . . the promotions . . . the administrative positions, and we began to get suits on sex discrimination, employment discrimination as well. The students began to bring cases. If you were wearing an earring and were stopped by the school district . . . Teachers, woman teachers came and said you can't stop me from wearing pants suits. Men came in and said you can't stop me from wearing sideburns and a beard. Well, we had all kinds of dress and grooming problems. Students, teachers, the sex discrimination, the employment discrimination, constitutional law questions requiring hearings, mostly in federal court, because we were being sued a lot. That called for some expertise in constitutional law. So it was a widely rapidly developing field and extensively, broad; a spreading out of legal problems that required somebody with some expertise. And if you weren't an expert and were a school board attorney, you had to learn it in a hurry, because things were changing quickly.²¹

It is true that things were indeed changing quickly. The desire for change tore at the very hearts of the poor, the disadvantaged, the young people, and

²¹Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

those people who felt they were not being treated equitably. As a result of all of this turmoil and unhappiness, and as a result of what can be called the struggle for freedom, the role of attorneys representing education began to expand.

Nineteen sixty-eight was a year in which our society as a whole suffered through the trauma of two political assassinations. On April 4, 1968 Dr. Martin Luther King, Jr. was assassinated and the words with which he closed his now famous "I Have a Dream" speech were engraved on his tombstone. As he ended his speech that day, Dr. King inspired millions.²²

About two months later, on June 5, 1968, Senator Robert F. Kennedy was in Los Angeles making a speech in which he was happily claiming victory in the California presidential primary. Suddenly, our national nightmare recurred without warning. Senator Kennedy was mortally wounded by an assassin's bullet and died the next morning. The nation collectively reeled and it seemed as though our world would never again be the same. Only five short years earlier, in November of 1963, President Kennedy had been assassinated and once again all laughter seemed to cease everywhere.

In addition to all of this heart wrenching turmoil, 1968 also saw a continuation of important case law which would be related to the evolving

²²William Benton, The Annals of America 1961-1968 (Encyclopedia Britannica, Inc., 1968), 159.

role of school board attorneys. That year, in the case of Green v. County School Board and in the similar case of Monroe v. Board of Commissioners, the Supreme Court held that it was unconstitutional to put into effect a plan in which people had the option to transfer their children to different schools for the sole purpose of avoiding desegregation.²³ In 1969, some lower court decisions that allowed Mississippi school districts to take advantage of time extensions with regard to desegregation. It is clear that these time extensions were nothing more than attempts to avoid participating in the effort to desegregate schools. In the case of Alexander v. Holmes County Board of Education, which took place in 1969, the Supreme Court held that dual systems of education were to be discontinued 'at once'.²⁴

While these cases were occurring, another major piece of legislation was passed in 1968. That year the Civil Rights Act of 1968, became law. It was put into effect in order to continue the battle against racial discrimination and was intended to protect the voting rights of people everywhere in our country. Another important aspect of the Civil Rights Act of 1968 was that it was designed to protect civil rights workers, as well. The need for such protection was certainly well documented. As Gutek stated, "The 1960s has

²³Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), 296.

²⁴*Ibid.*, 296.

been referred to as a "troubled decade," a time of social protest and discontent . . . a period of social revolution . . . an era of intense debate and activism, especially by many young people who wanted to bring about dramatic social, political, economic, and educational changes in the United States."²⁵ The war in Viet Nam was a catalyst for change. Minority groups such as blacks, Hispanics, and women were trying to gain equality.

Mr. Scariano described a situation regarding desegregation which occurred during the decade of the sixties.:

South Holland was involved in desegregation. South Holland District 151 in Cook County was composed of Phoenix, which was almost all black, and South Holland, which at that time was almost all white. As a matter of fact, I think it was all white. Eventually, the federal government went after it. The case went before Judge Hoffman here in federal court in Chicago and they were ordered to integrate and bussing was ordered too. Now that was a case that was open and shut.²⁶

Mr. Scariano was describing a perfect example of how the role of attorneys representing school boards was changing. In the beginning, as we have already seen, many were municipal lawyers who only dabbled in school law as a very small part of their total practice. As conditions changed in our society, the role of school board attorneys changed as well.

²⁵Ibid., 297.

²⁶Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

Religious Issues

The concept of separation of church and state has been important throughout the history of our country. This idea dates back to the times of the founding fathers. In recent history there have been examples of case law in which the issue of church and state have surfaced repeatedly. For example, in the late 1940s in Everson v. Board of Education, the Supreme Court held that providing bus transportation to parochial school students is not a violation of the establishment of the religion clause of the First Amendment of the United States Constitution.²⁷ In 1962 the subject of prayer in public schools came before the Supreme Court. In Engel v. Vitale, the Supreme Court held that praying in public schools was not constitutional.²⁸ Mr. Scariano discussed his perceptions of the relationship between the religious issues and the evolution of the role of attorneys representing school boards:

Everson v. Board of Education was the beginning of parochial involvement. It came up occasionally. It came up once in one of our school districts but we worked it out. We worked out a bus route. We gave parochial students bus transportation, but that was really the only case with religious overtones. We worked it out without any problem. No court, no administrative agency involved.²⁹

²⁷E. Edmund Reutter, Jr., The Law of Public Education (Mineola, New York: The Foundation Press, Inc., 1985), 19.

²⁸*Ibid.*, 32.

²⁹Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

When special education issues came into existence there were some religious overtones that surfaced. Occasionally a problem would come up with regard to religion. "For instance, does a special education teacher have to go to a parochial school and conduct classes over there?"³⁰

The answer to that question is that all special education services must be provided at the public school so as not to violate the entanglement clause of the First Amendment. The point is that this was yet another area in which attorneys representing school boards were becoming involved.

Labor Issues

Mr. Scariano expressed his feelings regarding the development of labor issues from the context of what it meant to attorneys representing school boards during the 1960s:

Labor came in the sixties--the early sixties. I pioneered collective bargaining in the south suburbs with schools with the AFT and the IEA. Other school attorneys, who had no knowledge of labor law were starting to learn the importance of having knowledge in this area. I had been representing labor unions in the private sector. Then I became a management lawyer in the public sector. It was no great shift, because if you knew labor law in the private sector, it helped. We didn't have any laws to guide us, but the private sector was a good guideline. Then we began to follow the labor law of the federal sphere. Not formally, but we looked to it for ideas, and since we were experienced in that field, it helped. IEA was not. IEA didn't know anything about labor law. They're pretty good at it now.³¹

³⁰Ibid.

³¹Ibid.

It is interesting to note that at the time that Mr. Scariano's role as a school district attorney began to expand into the area of labor negotiations, other attorneys representing school boards had little or no expertise in that area. The fact that Mr. Scariano had previous experience as a labor union attorney was very fortunate. The role of attorneys representing school boards was changing and expanding, rapidly.

The labor leaders of the American Federation of Teachers came out of the private sector. They were familiar with labor work. Ed Morrissey, who was with the American Federation of Teachers, in the south suburbs came out of the auto workers union. "He knew something about private labor law, and so did I. We didn't have any trouble adjusting."³²

Mr. Scariano went on to speak about the relationship between events that occurred, such as the increase in the need for attorneys representing school boards to become more familiar with labor negotiations, and how the role of attorneys expanded.

Now of course, we have our own state law, for education, one for state employees. Besides school districts and those firms that were representing schools, who didn't know anything about labor law, had to learn in a hurry. This was really not an extremely rapid development, it was a moderate development of the law. The field was an ad hoc situation at the time, that is, I've alluded to the fact that we copied

³²ibid.

collective bargaining in the private sector. We copied their contracts, but we couldn't give them everything they wanted.³³

The role of attorneys representing school boards was evolving. His perception after personally experiencing the evolution was that the changes which took place developed slowly. His previous experience in working with collective bargaining in the private sector prepared him for many of the changes that were going on in the field of school law. Mr. Scariano felt that as conditions in society changed, the role of attorneys representing school boards changed and evolved as well. As Mr. Scariano explained, people who were working in school law had to become very familiar with collective bargaining and labor issues. The state of Illinois has, for a long time, been considered to be a state in which the needs of handicapped children were met even before the passage of federal legislation mandated services to the handicapped.

Special Education

During the early to mid 1960s, school districts in Illinois were beginning to provide a wide array of services for handicapped children. Along with the growth of special education came additional rules and regulations which had to be followed. As time passed, educators working in the field of special

³³ibid.

education would come to be looked upon by many of their regular education colleagues as experts in the field of special education law.

The proliferation of rules and regulations which were generated by the Illinois State Board of Education would eventually be increased to a great extent. Then federal laws would follow, as well, and attorneys representing school boards would encounter a whole new field in which they would need to become proficient.

Mr. Scariano spoke about what started all of the special education work from the standpoint of an attorney representing school boards in the 1960s, and also, and perhaps more importantly, from the perspective of a parent of an exceptional child.

The situation occurred . . . attorneys started spending a lot of time on special education issues, [it] was largely a parent affair. We were the parents of a handicapped child ourselves. We were very active at Misericordia. Well, our child was there. She didn't live very long, and she was terribly retarded . . . we got active in the parents' group and the parents began to push for special education in the public schools. We don't have to send our kids to Dixon . . . [or] to any special education school like Spalding. There's no reason why you can't mainstream some of these kids . . . it was the parents who got after Ray Graham who was the special education officer for Ray Page . . . we really sat on this guy. We pushed through the special education bill in the midsixties. We put through a comprehensive special education bill . . . it was a model for other parts of the country. So that's how that came about. It was totally parent-driven. It was a big push and we got it through.³⁴

³⁴Ibid.

In addition to special education issues, problems with the economy were also associated with the role of attorneys representing school boards. Teachers (like many other Americans) were affected by the problems caused as a result of the faltering economy. They became more militant in their demands and so did the unions to which they belonged. Mr. Scariano spoke about these issues and related his experiences as a school board attorney at that in time.

As school law became more complicated, more complex, especially when they began to get into the labor field, collective bargaining, affirmative action, sex discrimination, employment discrimination, it began to be a burgeoning field, and local attorneys weren't equipped to do it.³⁵

School law was really no longer a part time area of practice in which municipal attorneys, for example, could feel comfortable about helping the local school district with an occasional legal problem or issue on a part time basis. Mr. Scariano went on to explain the evolution of the role of attorneys representing school boards from his own personal perspective as a former school board attorney who worked in the field during at that time.

Local attorneys started out by handling your bond issues, maybe a contract here and there; but that's about all they did, and that's about all that Harold Norman and Franklin Kline did, too, until the field began to thicken up a little bit. Then it became a highly specialized field, but they were in the catbird seat because they had the experience. Local attorneys in the suburbs and downstate began to feel lost in the field.

³⁵Ibid.

You had to know labor law. You had to know something about administrative law, constitutional law.³⁶

The Economy and School Law

During the 1970s the economy did not improve very rapidly. One of the results of the continuing poor condition of our economy was that many school districts experienced school closings. Closing a neighborhood school often led to an emotionally charged situation in which angry, confused, and sometimes even hurt, residents of a community lashed out at school boards and school district officials. A packed auditorium or gymnasium of angry people led to a very unpleasant situation for school administrators and members of school boards. Every time a school had to be closed, attorneys representing school boards needed to be informed and consulted by district officials who were involved in the business at hand. Again, school district attorneys experienced another change in their role related to events occurring in our society. There were school closings and reductions in force. School attorneys played a significant role. First of all, this led to a large number of clauses to help solve the problem. Teachers began to realize what they could include in an agreement to get some orderly procedure. "We had a lot of problems with that at first because they were looking for a lot of things that

³⁶Ibid.

were different than the school code provided, in 'riffing',³⁷ in tenure, in other things that gave them some kind of job security. It all relates to job security. So as teachers became more aware of the fact that the school code was all stacked in favor of schools, they felt, 'let's change that'.³⁸

It is obvious that teachers as a group were beginning, or had already begun, to 'feel their oats'. These teachers had lived through the turbulent sixties. People of that generation had become cognizant of the fact that there is strength and security in numbers. Organized groups of people who work together can move mountains. Teachers wanted to add clauses in their contracts. "Schools resisted that at first, and we went to court"³⁹

The role of attorneys representing school boards continued to evolve. Teachers began to understand the concept of the power they could wield as a group of people working together.

Now, today, school law is very different when it comes to job security than when I started practicing in [the] school law field. Teachers realized that [they could influence legislation] through their financial help to candidates for political office, especially at the state level, and through their working for them in elections, doing the doorbell ringing, the passing out of literature, manning the sound trucks, everything that it

³⁷A term derived from the acronym RIF, meaning reduction in force.

³⁸Ibid.

³⁹Ibid.

takes to win an election. They got active, they used their money, and they got what they wanted.⁴⁰

Mr. Scariano again reiterated the importance of organizing, and sticking together.

They began to make their power felt. Look, when you count the teachers, in the state of Illinois, it is probably the biggest single group of employees you have anywhere in any field. So, when they stick together, they are powerful people.⁴¹

During the 1970s, inflation was a very serious problem. One specific area in which the effects of inflation were felt to a great extent was in the rise in energy costs. Increased energy costs had an interlocking effect on other areas such as transportation, manufacturing, and farming. Between 1970 and 1980 prices rose at an unprecedented rate. For example, the price of automobiles increased 70 percent, home construction, by 60 percent, and many food items doubled in cost. Although they were increasing, wages fell behind the cost of living. The real income of wage earners, measured in purchasing power, actually declined.⁴²

With inflation sky rocketing, and purchasing power actually decreasing, it is obvious that teachers employed by public school districts were feeling the

⁴⁰Ibid.

⁴¹Ibid.

⁴²E. Edmund Reutter, Jr., The Law of Public Education (Mineola, New York: The Foundation Press, Inc., 1985), 32.

effects of the faltering economy. Conditions were ripe for management/labor strife during this period of time. The role of attorneys representing school boards continued to evolve in relation to what was occurring in society.

During the 1970s:

. . . everything they saw in the private sector they wanted in the public sector . . . we had limits as to what the law would permit . . . the teachers were considerably stymied by the law because we'd go into court and they'd say, 'no you can't do that, that belongs exclusively to the board, it's management's rights.' Now we don't have that problem but at one time we did.⁴³

People were frustrated because of the difficult situation they encountered everywhere due to a lagging economy. They were frustrated and, in many cases, were suffering to a great degree because inflation was really out of control. Mr. Scariano remembered that teachers as a group were feeling the pressure of a bad economy and, to make matters worse, they were feeling frustrated as well.

. . . On the one hand you would recognize them, and you would enter into collective bargaining with them, but on the other hand there wasn't too much you could give them in the contract. Some school boards gave them everything they wanted. Other districts were holding back. We had a hodge podge. That's why you needed a labor law passed. There were no guidelines at the state level that you could follow. The federal law, although it was good, with respect to giving you some ideas, and giving you some experience, . . . wasn't the answer all the time. So we did have some moments of trauma. Ultimately, we worked out of it.

⁴³Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

The seventies were taken up by this. We didn't start getting labor laws here till the mideighties.⁴⁴

In 1973, the Vocational Rehabilitation Act became law. The purpose of this particular legislation was to make certain that employment opportunities were made available to handicapped individuals. In addition, architectural barriers as well as transportation barriers were considered to be illegal as a result of the Vocational Rehabilitation Act of 1973. Two years later, a law was enacted that would have far reaching effects on schools throughout the nation. That law was the Education of All Handicapped Act of 1975. Not only would this law have an effect on school districts, but it would be related to the continuing evolution of the role of attorneys representing school boards, as well.

The Education of All Handicapped Children Act (P.L.94-142) meant that school districts were mandated to educate all handicapped children between the ages of three and twenty one. The role of attorneys representing school boards was changing and expanding. The expansion and the changes in that role were related to events occurring in society, and the passage of P.L.94-142 was no exception. Mr. Scariano was representing school boards before special education developed into the specialized field it was to become. "I think my son's law firm has at least three or four people who devote

⁴⁴Ibid.

themselves entirely to special education. Maybe four or five, or half a dozen, but they devote themselves entirely to special education law."⁴⁵

The IEA

Perhaps one of the most interesting correlations to consider in regard to the relationship between changes in society and the evolving role of attorneys representing school districts is the relationship between the proliferations of teachers unions and the evolution of the role of attorneys.

Teachers were joining the Illinois Education Association (IEA) and wanted collective bargaining. Their administrators were the heads of the IEA, a situation which created many problems. Mr. Scariano discussed the development of the teachers union and the relationship between that development and the changes that occurred in the role of school district attorneys.

The IEA was originally a management affair. Teachers were being required to join . . . their administrators held all the top offices. The IEA was administration dominated . . . management dominated. So when they [teachers] first started to timidly ask for collective bargaining, they would get turned down because their administrators, who were the top guys in the IEA began to feel, this won't go. You guys are not union people, you are professionals. They made a difference, a dichotomy that if you were IEA you couldn't be labor union. That wasn't professional. You put yourself in the same category as a tractor driver or a ditch digger in their eyes.⁴⁶

⁴⁵Ibid.

⁴⁶Ibid.

Mr. Scariano continued to express his feelings with regard to the manner in which the IEA began to change.

Then the IEA began to see what the AFT could do. The AFT was getting results. They were getting benefits for their teachers. Not only fringe benefits but working benefits too. Working conditions that differed greatly from the school that was dominated by the IEA or that didn't have a union. So the IEA began chaffing a little bit. Ultimately they threw all the administrators out. You won't find a single administrator who is an officer in the IEA. At least, I don't think so.⁴⁷

Mr. Scariano went on to explain that as time went by, teachers came to feel quite comfortable with the notion that they were union members.

So now it is a teacher dominated affair and they don't mind being called unions. At that time you couldn't call them a union. They resented it. They wanted to be known as professionals. When they asked for a contract, it was not a collective bargaining. It was a professional agreement. They looked down on all the nomenclature, the terminology, the labor unions. But, they wanted pretty much what the AFT had. They began to loose members to the AFT. The AFT began to organize school districts and the IEA was left behind. They were looking for members. They said 'Hey, time to call a screeching halt to this whole business.' They became more union than the AFT, if you could say that. Now teachers don't feel that way at all. They are terribly involved in politics which they shunned before. They're deeply involved in labor affairs. It's probably the second largest union in the country next to the Teamsters. They've got one of the largest unions in the country. They get results. They're not timid anymore. They haven't been for a long time. They have legal protection which they didn't have when I was active in the field and just getting started with labor situations in public education.⁴⁸

⁴⁷Ibid.

⁴⁸Ibid.

As a result of the growth of teachers unions, negotiations are very common today and are also related to the expansion in the role of attorneys representing school boards.

According to Mr. Scariano, the role of attorneys representing school boards has evolved to a great extent over the years. The changes that have been experienced by people who have practiced school law for a long time have been related to the changes that have occurred in society. Today, school law is a very specialized field. Mr. Scariano remembers that in the beginning "Harold Norman and Franklin Kline were the big ones when I entered the field. We gave them some competition and became the third. Today, my son has quite a few districts . . . over 150. They are equipped to do it and they have a good name, a good reputation."⁴⁹

Mr. Scariano went on to explain that the field of school law is becoming attractive to large law firms today and that they are competing with smaller firms on a regular basis.

He's getting some competition from the bigger law firms, who, when the private sector dried up began to move into the public sector. Especially people who know a little something about labor law. Some of these firms were primarily labor law firms. They went into the public sector and their specialty was labor law.⁵⁰

⁴⁹Ibid.

⁵⁰Ibid.

Mr. Scariano talked about the situation that currently exists regarding the extent to which school law has expanded to its current state. He stressed that not just any practicing attorney can move into the specialized field of school law unless he or she is very well versed in the field.

Attorneys who represented school boards didn't have much to do in the old days . . . You're probably familiar with the fact that some school boards have hired in-school counsel. They put them on the staff . . . they do the regular run of the mill work, but if it happens to be a little specialized, they call in people who are specialists in the field.⁵¹

Increased Litigation

Perhaps one of the strongest correlations between events in society and the manner in which the role of attorneys representing school boards has changed, according to Mr. Scariano, has been the increase in litigation that has been occurring in our society over the years. Mr. Scariano spoke about that issue as well.

I think that there's a lot more litigation today than when I was starting out in school law. There was hardly any when I started out in school law. I think what brought it about was people realizing that they had problems that were not being solved, but also that there was people power too. People began to realize that if they were organized they could push through what they wanted at the legislature or even at the local school level. This came about through Viet Nam, the social unrest, the dress and grooming [issues], the desegregation, the labor push--all of these things combined.⁵²

⁵¹Ibid.

⁵²Ibid.

Mr. Scariano had expressed the belief that his perceptions with regard to the manner in which the role of attorneys representing school boards had changed was as follows: certain events had taken place in our country; the events that took place were related to the changes that transpired in the role of school district attorneys.

During his tenure as an attorney representing school boards, Mr. Scariano noticed that not only has the role of school board attorneys changed, but today school law is, in reality, a big business. Special Education is a big field in the area of school law. School district lawyers work administratively and in the courts. They advise school districts and try to keep them out of litigation. It is a full time profession. "Today my son does school law almost exclusively. So it's become not only highly specialized but a big business. It's a big practice. The thirty lawyers he's got working in his firm all do school law. They do very little work outside the school law field."⁵³

Mr. Scariano went on to explain what, in his view, school law is really like at this time.

Now you can say it's not a sideline anymore. It isn't a bond issue occasionally or a contract occasionally. You are in it full time, and you are working at it day and night, weekends and holidays. School board meetings are generally in the evening. Sometimes you're needed on the weekends and on holidays. During collective bargaining you're spending weekends at work. You're spending holidays, and you're spending

⁵³ Ibid.

nights. It has become a big business, and a twenty-four hour a day business. My son is never home. I was never home dealing with school boards, either, near the end of the time I was a school board attorney.⁵⁴

Mr. Scariano is truly a pioneer in the field of school law. Allen Franke is an individual who qualifies as a pioneer, as well.

The changes perceived by Mr. Scariano are interesting to consider. He believes that, in the beginning, school law was not a full-time area of specialization. Attorneys working in the field of school law in the early years represented businesses, municipalities, and commercial establishments. Segregation issues in the sixties, general unrest during the sixties, Viet Nam, and the counter culture were all related to the expansion of the role of the school board attorney. Religious issues, labor issues, special education, the economy, the IEA, and increased litigation were all related to the evolution of the role.

In Chapter III, Mr. Franke's perceptions and views on the evolution of the role of school board attorneys are examined.

⁵⁴Ibid.

CHAPTER III

ALLEN FRANKE

Allen Franke was born in 1915 and raised in Springfield, Illinois. He grew up in Springfield, Illinois, and remained there through junior college and then relocated to Chicago.

Mr. Franke attended the University of Chicago Law School. During an oral interview at his office in Chicago, he spoke about the fact that at the time he attended the University of Chicago, the manner in which attorneys were educated was different than it is today. "At that time they had a different program at the University of Chicago. You could come in with two years of college and then take four years of law school. Normally it's four years of college and two years of law school."¹

While Mr. Franke was attending the University of Chicago law school, the United States became involved in World War II. The war affected every facet of life in our society at that particular time. "In 1941 there was a move

¹Allen Franke, interview by author, 18 May 1993, Chicago, Illinois, tape recording.

to get everyone through law school as soon as they could. Those of us who were there on a four-year law school plan went to summer school in 1941."²

Mr. Franke demonstrated that even as a young man he was quite capable of working very hard and diligently to achieve a worthy goal. "It was an intense course, and so you ended up graduating a year earlier. We went to law school for three years and to college for two years, so we came out in five years instead of seven."³

During the course of a person's lifetime, many people may influence his or her development. This point became clear when Mr. Franke discussed the manner in which he became interested in deciding to choose law as a career.

The father of one of my friends was a lawyer, and there was no background of college education, doctors, lawyers, or anything else in my family. My dad didn't graduate from law school. He went to work. He was one of the smartest people I've ever known, in a practical sense. He was a very astute businessman and a very kind person. He was one of the fairest businessmen I've ever seen.⁴

In 1943 Mr. Franke began practicing law. The United States was embroiled in World War II. In terms of the legal profession, school law as an area of specialization did not yet exist.

²Ibid.

³Ibid.

⁴Ibid.

At the time there was no school law, no such thing. I started with a firm, and whatever they gave you, you took. It wasn't until 1945 that I started doing school work. In 1945 there were just under 15,000 school districts in the state of Illinois, and one of the senior partners of a law firm was on a school board and got interested in the school field.⁵

Mr. Franke was speaking about Harold Norman, who served on the Governor's School Problems Commission for eighteen years. He continued to explain and expand on the manner in which school law as an area of specialization got started. "At that time we had the biennial system in the legislature. People appointed to the commission were appointed for a two-year appointment. He spent a tremendous amount of time working on the School Problems Commission. From then on, he developed an interest in the schools."⁶

School Law in the Early Years

Mr. Franke became involved in school law as a result of Harold Norman's interest in the area in much the same way that Marvin Glink became involved as a result of the interest that Lou Ancel had in this particular area.

I got into it because he got into it. At that time there was a lot of consolidation of schools. Small school districts were dissipating. We had bussing, and with that, more money was involved and you had a lot more complications rather than just a good old country school house. With complications, you get into legal problems, with people watching

⁵Ibid.

⁶Ibid.

you. You want to make sure you do it right. The attorney that I'm talking about was Harold Norman.⁷

When school law first began to develop as an area of specialization, the attorneys were not challenged. As Mr. Franke spoke about the early years in his career, he expressed his views on the difference between school law as it is now and the way it was when it first began to develop as an area of specialization.

The main difference between now and then is the matter of students' and parents' rights. Then, the opinion of the attorneys were very nearly absolute, and there was little challenge from either the students or their parents. There were some challenges in the employee field, but there was no collective bargaining. There was also immunity from damages, from court action, and that, of course, has all changed.⁸

An additional fact which Mr. Franke views as a difference between the practice of school law in the early years and the manner in which it is practiced today has to do with the Illinois Legislature and the United States Congress. He believes that these two bodies have had a great impact on the field.

The legislature in Illinois and the Congress of the United States have put their fingers into the situation. With all their mandates and by telling the

⁷Ibid.

⁸Ibid.

school boards how they ought to run the schools, the scene has changed. That has been a tremendous difference from when we first started out and how things are today. This situation has taken away a lot of the ability of the school district superintendents to operate."⁹

In this particular instance, Mr. Franke described an interesting parallel between the manner in which the role of attorneys representing school boards has evolved and the way the role of school district superintendents has evolved as well. As he spoke about school district attorneys and school superintendents, he began to think about the concept of whether or not attorneys representing school boards in the early years were more like consultants or administrators.

There were two types of approaches used by school board attorneys. One type [was] where the school board attorney held the board's hand. He showed up at every meeting, and we never did that. Our contract was purely on the basis of when we were needed."¹⁰

At this point in the discussion, Mr. Franke demonstrated his fairness in terms of the way he conducts business. Based upon what he had said about his father and the exemplary manner in which he conducted his business affairs, it is obvious that his father had a great positive influence on the way he conducted himself professionally.

You shouldn't pay us to sit and watch, or it shouldn't become a circus. We felt you shouldn't look at the attorney as being the outside person who is an expert on every issue when the truth is the attorney can help

⁹Ibid.

¹⁰Ibid.

give options regarding policy decisions but not make those decisions for the superintendent and the school board. That's always been our view of it. Otherwise, it becomes a waste of our time. We don't like to get paid for doing nothing. Also, we do not have contracts with school boards. We feel that we are professionals and that school boards should have a choice.¹¹

Mr. Franke had expressed his views on professional and business ethics in such a way that it became clear that he is a very honest thoroughly professional individual.

After the landmark case, Brown v. the Board of Education, in which the Supreme Court ruled that racially segregated schools were illegal. It seemed as though our country was destined for monumental social change.¹²

Mr. Franke talked about his views with regard to life as an attorney representing school boards and racial issues. "On the whole, there was practically no litigation on that in Illinois. On the south side, in South Holland there was a case. Then down in the East St. Louis area where there were large numbers of Blacks, and, of course, [in the] City of Chicago, but other than that, no."¹³

¹¹Ibid.

¹²Perry A. Zirkel, ed. A Digest of Supreme Court Decisions Affecting Education (Bloomington, Indiana: PHI DELTA KAPPA, 1978), 80, 81.

¹³Ibid.

Desegregation

As a school board attorney Mr. Franke did not encounter many issues regarding desegregation. He did, however, experience changes in the role of attorneys representing school boards as the decade of the 1950s continued. One of the changes that he believed was significant was, in his opinion, a result of the population explosion occurring at that time. He spoke about life as a school board attorney in the fifties.

. . . that was a time of growth because we had consolidation in the fifties. You had the postwar baby boom, and that affected the schools in the fifties. There was a lot of acquiring property. You had financing and increases in staff. So I probably handled three hundred or more architects because you needed more buildings.¹⁴

The fifties, as a time of growth, were viewed as years in which the role of attorneys representing school boards began to expand. Mr. Franke stressed the concept that this was really a dramatic change from the situation that existed when he first began to practice law.

When I first started practicing law, there was no such thing as school law. No such thing, not at all. No specialization, never heard of it then. It wasn't referred to in that sense at all. It didn't begin to change till the middle fifties. There were a few firms that did most of it. Tony Scariano did some of it.¹⁵

¹⁴Ibid.

¹⁵Ibid.

Population Growth and School Law

The issue of growth was particularly important in terms of the changes and development that took place in the role of attorneys representing school boards, according to Mr. Franke. Not only was the actual increase in the population important, but, the fact that school districts grew and began to administer larger sums of money was an important factor in the expansion of the role of school district attorneys.

Once you get larger entities that school boards preside over and more money, as opposed to a one room schoolhouse, things changed. In some districts we were building a school every other year. You've got to acquire the land, there was tremendous expansion of staff. You have all the problems with the employees. People are interested if you are dealing with a lot of money. They start to watch and you need help. You then needed some legal help. What were you going to do with all of this money, for example? Then, also, we did start to expand when the unions came in. You had the IEA. In the beginning, there were no strikes. It was illegal to strike.¹⁶

Mr. Franke continued to think about the role of attorneys representing school boards and the manner in which he perceived the changes that occurred in that role. "There were cases that had to do with religion. We still get them. We had them as far back as the fifties and sixties because we had the Catholic schools in the suburbs."¹⁷

¹⁶Ibid.

¹⁷Ibid.

Mr. Franke did not get into any litigation over religious issues but dealt with transportation cases where special education students attended the parochial school and then came to public schools for special services. The result was that if there were room, the parochial school student could ride the bus for services.¹⁸

The Sixties

During the decade of the sixties, our society was faced with many problems that have been covered previously. Mr. Franke thought about those times and the manner in which the role of attorneys representing school boards changed during those tumultuous times.

In the sixties, the role changed in the sense that the problems were changing. In that period you began to get the challenges being made by the parents and the students opposing what they said was an autocratic way that Boards of Education controlled the school system. They started to feel that their constitutional rights were being violated. For example, the case in Des Moines, Iowa during the Viet Nam era was a great one that characterized the period.¹⁹

The case, mentioned above, Tinker v. Des Moines Independent Community School District, dealt with three public school students who were suspended for wearing black arm bands to class to protest the government's Policy in Vietnam. The court declared that it was 'unconstitutional' to suspend students

¹⁸Ibid.

¹⁹Ibid.

for the peaceful wearing of arm bands or other symbols of expression unless it interfered with the school's routine.²⁰

As Mr. Franke continued to think about the sixties and the manner in which the role of attorneys representing school boards changed, he spoke about a memorable situation involving high school boys and wearing long hair to school. The district court held that the students had a right to wear their hair however they wanted.²¹

It's interesting, though, how the pendulum has now swung. The courts now hold that the Board of Education does have a right to set a dress code--anything that relates to what you wear in school. If you have a rational reason for your rule the court has upheld school rules. Even though it might infringe on the students' [right] to wear a particular thing, the courts have held that the infringement is minor and the courts will not treat it as rising to a constitutional level. If it changes the lifestyle however, there the courts might say you can't go so far as to require them to conform. Also teachers now have to conform whether there are lifestyle issues or not. In the sixties we had problems with that too.²²

Mr. Franke was describing his perception of the manner in which the role of attorneys representing school boards was changing and growing. He stated that people in general seemed to be more militant in the sixties and that labor negotiations and labor problems started to emerge as issues that

²⁰Perry A. Zirkel, ed. A Digest of Supreme Court Decisions Affecting Education (Bloomington, Indiana: PHI DELTA KAPPA, 1978), 38.

²¹Allen Franke, interview by author, 18 May 1993, Chicago, Illinois, tape recording.

²²Ibid.

would be important factors in the expansion of the role of attorneys representing school boards.

Labor Negotiations and the Tenure Act

Labor negotiations started way back in the sixties but you had differentiating between labor negotiations and labor problems. Labor problems have always been there since you've had a contract between teachers and the board. There have always been problems. Then the tenure act came along in the early forties. That changed things a great deal, and over a period of time that change evolved slowly. It used to be that school boards conducted dismissal hearings. That's no longer so. Now a hearing officer appointed by the state conducts the hearings.²³

As a result of the tenure act, in order to dismiss a first year teacher, the district must issue a notice to the teacher. A second year teacher is entitled to notice and reason. Tenured teachers are entitled to notice, reason, and due process. According to Mr. Franke, this issue was a major factor in changing the role of attorneys representing school boards.

He was involved in one of the first cases involving a teacher dismissal in Paris, Illinois. The teacher was a basketball coach, and in a small town a successful basketball coach is held in high esteem. The teacher felt he could take a few liberties with female students (sexual Harassment). The school board didn't agree. The case went to the appellate court and Mr. Franke won the case.

²³Ibid.

Years later there was a school board election. A new majority came on the board. Even though Mr. Franke won the case mentioned above, the new board hired the coach back. "So, he got his job back! That goes to show you how important they felt a successful basketball team was! That was in the late 1940s. As a matter of fact, eventually they built a new gymnasium and named it after him!"²⁴

It is evident that these types of cases would eventually create a situation in which it would take more time to represent school boards appropriately. As a result, attorneys representing these school boards would notice an expansion in their particular area of expertise.

Special Education

Teacher unions were getting very strong in the sixties. Labor laws contributed to changes in the role. Special education had an impact on the role also.

Mr. Franke went on to discuss his feelings and perceptions with regard to issues such as teachers unions and the impact of special education on the role of school board attorneys.

With special education, it was something new. Just like anything else that comes in new, you had a new federal law, Public Law 94-142 that required school districts to do many things, and like anything else,

²⁴Ibid.

expand our role to pick it up. We spent a lot of time learning about it because we had to advise our clients.²⁵

In Mr. Franke's view of the ways in which the role of attorneys representing school boards expanded, special education was a major factor. He continued . . .

Special education was the hardest pill for school boards to swallow because superintendents would tell them, based on our interpretation of the laws and the rules and regulations, it doesn't matter how much it's going to cost, you have to do it . . . People felt that you were actually stealing from regular students to fund programs for [special] students. Thousands and thousands of dollars were being spent on special placements and programs. We received countless questions from superintendents and school boards. [They] would question their attorneys to see if there was any way they could avoid these situations. It was the money in many cases. Also, it's an area where there is less known by school board members and administrators than any other area. They were not prepared to handle all of this without assistance from attorneys. They would often screw up these cases. Also, then came the change with regard to attorneys fees. This induced lawyers working on behalf of parents to take cases, even though there was maybe only a very slight chance that they would win their case.²⁶

Based on what was happening in the field of education with the advent and expansion of special education, the role of attorneys representing school boards was expanding as well. It is easy to see how the role was expanding and changing in concert with changes that were occurring in the field of education. Mr. Franke went on to discuss his perceptions and feelings

²⁵Ibid.

²⁶Ibid.

regarding the difficult economic situation encountered in the 1970s and whether or not that particular situation had anything to do with the manner in which the role of attorneys representing school boards evolved. For example, in the middle of a difficult economic situation, reduction in force (RIF) often becomes a necessary option that must be considered by financially strapped school districts.

Mr. Franke had an interesting RIF that went into litigation. The question involved whether or not the person who was 'rified' was actually qualified for a position that someone with a lower seniority kept. It turned out that the records that the school had, and the superintendent had, were not correct. At the last minute, the state superintendent called him. The person who was rified was actually qualified for a position that a person with less seniority had kept. It turned out that the record that the school had and the record which the superintendent had, were not correct, and this destroyed the discharge. "In a case like that, the outcome is you end up with two people and only one position."²⁷

Mr. Franke also described another kind of situation in which school district attorneys would become involved. The role of attorneys representing school boards had expanded and evolved over the years. As our discussion

²⁷Ibid.

continued, he spoke about his area of specialization, school law and what had changed within the field as he considered what had actually shaped his career.

I think it's a very interesting field. It was more fun practicing before we had all the challenges being made, in what turned out to be a very challenging and abrasive manner. Now school board members often come in with their own agenda . . . a mission. They often don't care about anything else, whereas, before, your school board members weren't that way. They were trying to run the schools. If you have your own agenda, if you've got a sense of pretty much of a tunnel vision, it's not good. We see school boards with a tremendous amount of that, and that's like our society today. It's more a feeling and an attitude of 'me, me, me, what's in it for me?' However, despite that, it's been a very interesting life. There aren't loyalties like there used to be, though. The change, too, is on the part of the lawyers that you have. They also have changed, and you don't have the mutual trust and loyalty anymore.²⁸

According to Mr. Franke, changes in attitude and the manner in which people relate to each other were important factors in the way that the role of attorneys representing school boards changed over the years. It is obvious that the role had, in his experience, expanded; but it is interesting that from his perspective it was just not enjoyable or as much fun as it once seemed to be.

Finally, Mr. Franke spoke about the way he would most liked to be remembered.

Well, I would say I'd like to be viewed as being fair, and, as an attorney, I'd like to be viewed as having tried to achieve what the client wanted to achieve if it were possible to do so within legal parameters. If you

²⁸Ibid.

can't do that, I would try to work out a way . . . to change the way the client would approach the situation.²⁹

Mr. Franke is an outstanding individual and a credit to his profession.

Mr. Franke identified several changes that took place in the role of the school board attorney. Population growth; new challenges to administrators and teachers; changes in the attitudes of the Illinois Legislature and the United States Congress; the culture of the Sixties; labor negotiations; the Tenure Act; special education and the poor economy in the 1970s, were all related to the increase in the role of the school board attorney. Mr. Franke also believes that board members with hidden agendas and a general attitude of selfishness seem to dominate our society, and this has affected the role of attorneys representing school boards.

Chapter IV focuses on an individual whose career could not be overlooked in a study of this nature. Louis Ancel was also one of the pioneers in the field of school law. Mr. Ancel is deceased, but through his longtime partner, Mr. Marvin Glink, who knew Mr. Ancel well and generously agreed to assist the author, Chapter IV covers the career and views of Mr. Ancel.

²⁹Ibid.

CHAPTER IV

LOUIS ANCEL

Louis Ancel and Marvin Glink worked together for over thirty years, from 1960 to 1991. During an interview, Mr. Glink spoke about his late partner and described some of the characteristics that he felt were special. "One of the things that distinguished Lou from other attorneys was his feeling for the law . . . his feeling that someone had to see it as a profession . . . someone had to do something about the way it needed to be reformed . . . the way it had to be changed."¹

One of Mr. Ancel's projects for years was a new constitutional convention. He became one of the leaders and developers of the 1970 Illinois constitutional convention. He served as secretary to the local government committee at the convention. He was a very strong advocate for the principle of home rule. It would give communities the opportunity to decide their own fates without having to go to the legislature every time they wanted to do something.²

¹Marvin Glink, interview by author, 8 June 1993, Chicago, Illinois, tape recording.

²Ibid.

In 1957, Mr. Ancel wrote an article which was published in the University of Illinois Law Forum in which he stressed the notion that home rule, and local governmental autonomy was important. "Even assuming the most favorable attitude on the part of the reviewing courts, it remains for the legislature to take the definitive step by granting to municipalities the power to license for regulation all activities affecting the health, safety, and welfare of the community."³

In his article, Mr. Ancel emphasized the value and importance of home rule and local control. "There is no reason to believe that all wisdom resides in Springfield or that the city councils and village boards are not possessed with the knowledge and experience necessary to determine what is best for their own communities."⁴ Naturally, Mr. Ancel was also concerned about the field of education. He would advocate changing the way schools were funded by the state.

He, as well as others of us who are in the field, feel very strongly that it's really wrong the way education is funded in this state. Unfortunately it falls prey to the political gerrymandering down in Springfield, and it shouldn't. Education should be primarily a function of the state and instead it has been pushed back and forth and now, I guess, it's going to be a function of gambling which I think is very unfortunate. Gambling can provide income for a lot of things, but I still think school and education should be primarily the function of the state to see that

³Louis Ancel, "Licensing as a Regulatory Device," The University of Illinois Law Forum No. 1 (Spring 1957).

⁴Ibid.

all schools are adequately funded. I don't have a problem with accountability but, certainly, with making sure there are adequate funds to do what needs to be done. So those kinds of things always interested Lou, probably more than any other attorney I can remember.⁵

Mr. Ancel would respond to other attorneys who would call to ask his advice, and he would never bill for this. His phone was always available to people who needed advice, to neophytes in the field, or even experienced attorneys who said this is a tough problem. Lou would often research questions for these people just to help them so they wouldn't feel lost at what they were doing. I think he would look upon that as one of the things that he needed to do to make the system function.⁶

Personal Qualities

Mr. Ancel was a person who gave freely of himself in the service of others. His generosity was not limited to assisting other attorneys in solving difficult or unusual problems. He would give of himself in lecturing, and participation in programming--in programming that would improve both municipal attorneys and school attorneys--and the entire [law] field. He would urge us, the rest of the firm, to be involved in the same way.⁷

Mr. Glink recalled a particularly touching memory which demonstrated the kind of person his partner was.

You could always see Lou coming down the hall from one of these programs he had put himself on, carrying two heavy briefcases which carried the Illinois Statutes in them, and you know that's quite a load--four or five volumes of the Illinois Statutes--and he'd always say: 'Well, you never know if somebody's going to ask a question and it will be

⁵Marvin Glink, interview by author, 8 June 1993, Chicago, Illinois, tape recording.

⁶Ibid.

⁷Ibid.

something I need to look up.' He was like that more than anyone else in this office.⁸

Mr. Ancel always prepared himself and the members of his firm professionally with regard to new legislation.

When the new statutes came out, or we got a new listing of the new pieces of legislation that were passed in Springfield, he would meticulously read the whole bill and the entire act so that he'd be familiar with what types of changes had taken place. He would always--always--when presented with a new problem, always go back and look at the statute, just to make sure there hadn't been a change that he didn't know about. Even though it was in an area where he had been practicing for fifty years, you should know it, but he wanted to make sure it hadn't changed.⁹

Mr. Glink described the kind of person Lou Ancel was with regard to his commitment to the profession of law and his philosophy of life.

Lou was very dedicated to the practice of law, more so than perhaps most of us. My views and philosophy of life are different than Lou's. I believe in vacations. I believe in letting our young people have more freedom with their families. It's tough being a school attorney because you have a lot of night meetings and you're out a lot. Lou would go to all meetings. He was always there when someone needed him. He hardly ever took vacations . . . he had a lovely home, and he felt that this was all he needed, and his wife was very happy. They had a long and successful marriage. He had wonderful children, grandchildren, but the law was his first love besides his wife. Maybe the law was his second love. He really did enjoy it. There are a lot of people who unfortunately don't enjoy it. He really enjoyed it. He enjoyed being of help. He enjoyed practicing law. He enjoyed solving problems.¹⁰

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

Mr. Ancel was also interested in working on ideas which could be helpful to school districts in the area of school finance. He did creative things with school finance locally. Before the constitutional convention there were ceilings and caps on rates. Mr. Ancel tried to figure out ways that could help in the cash flow, ways to get a bond referendum approved without expanding funds, getting citizens involved in the need for financing programs of the schools, working cash funds, and developing ideas on how to use the working cash fund to supplement the education fund or the building fund, where it might have been needed.¹¹

Mr. Ancel was truly an individual who cared about people and his profession. Mr. Glink spoke about the fact that many successful attorneys started out with Mr. Ancel and they owed him a debt of gratitude for all he did for them. Mr. Ancel helped develop a very unique specialty which today is known as school law.

When he first started there were very few people who did as much as he did. A lot of people who today are very successful attorneys, came out of Lou's school. Lou would never discourage young people who felt they could better themselves and do something on their own. He would send them out of here with his blessings. He never harbored any resentment [such as]: I spent a lot of money training you, teaching you . . . now you

¹¹Ibid.

want to go out of here . . . you want to take my clients away from me. Never that, he was always very philosophical about it . . . to his credit, I think.¹²

Mr. Glink's association with Mr. Ancel began in 1962. In 1961 Mr. Glink was made corporation council for Skokie. He and his brother had opened their own office in Chicago but spent most of their time in Skokie. During that period they met Mr. Ancel in municipal activities in that village. In 1964 Mr. Glink and his brother became associates with Mr. Ancel.

We were together a long time. I think Lou would like to be remembered as one who was dedicated to local government, and self determination . . . as one who believed strongly in education. I think he had a deep interest in local government and schools and the rule of law as opposed to the rule of man. I think he'd be happy to know that his training helped a lot of young people, and, hopefully, his training is helping a lot of other people to have that same kind of feeling and appreciation. I think that, above all, is something he would like to be remembered for.¹³

The late Louis Ancel was truly a pioneer in the field of school law. Mr. Ancel was the senior member of the law firm of Ancel, Glink, Diamond & Cope, P.C. He had received his education from the Northwestern University School of Liberal Arts. He specialized in the fields of school law and municipal law for over forty years. Mr. Ancel drafted numerous legislative bills in the local government law and school law areas that are now part of the state

¹²Ibid.

¹³Ibid.

statutes. " . . . Since 1935 he . . . represented a large number of cities, villages, school districts, park districts, library boards, sanitary districts, and fire protection districts."¹⁴

Early Work as an Attorney

It is important to note that in 1935 Mr. Ancel was involved in representing many cities, villages, park districts, library boards, sanitary districts, fire protection districts, and school districts. Attorneys representing school boards in the 1930s and 1940s did not specialize in the specific area of school law. When school law was just beginning as a field, lawyers were doing a lot of other work besides school law.

Lou Ancel's big field was municipal law. Cities and villages needed lawyers . . . village attorneys. There were corporation councils. There was never a school board attorney on the staff the way village attorneys and corporation council were on staff. So what he did was he branched out from municipal law into local government law generally. He began representing all kinds of special bodies.¹⁵

As time went on, attorneys representing school boards would find that more of their time would be spent on issues relating to school law and they would eventually specialize in school law on a full time basis.

¹⁴Ancel, Glink, Diamond, Cope, and Bush, P. C. Attorneys and Counselors at Law, Chicago, Illinois, information pamphlet

¹⁵Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

Historical Background

People living in the United States in the 1920s, the 1930s, and from 1940 to 1945, experienced the 'Red Scare', the Scopes 'Monkey Trial' of 1924, and booming economic prosperity. The first American 'youth subculture' emerged in the twenties. Suddenly, everything changed. The Great Depression was devastating. The National Labor Relations Act of 1935 had a great impact on the people of that era and continues to affect people today as well. John Dewey, George S. Counts, and William C. Bagley discussed and wrote about issues concerning the state of public education in the 1930s and the need in our country for, as they believed, a new social order. Collective bargaining issues emerged in 1940, and at the same time, the specter of World War II cast a shadow over America. While this was happening, James Conant supported education that would lead to a classless society. Freedom of speech issues, discrimination in employment, racial unrest, conflict over religious issues, and situations with regard to labor unions emerged.

While all of this was happening the late Lou Ancel began practicing law as did other attorneys of his generation. All of these interconnected events and issues invaded the collective American psyche and acted as catalysts precipitating change with regard to life in general and, more specifically, with regard to the role of attorneys representing school boards. The role would

evolve over time as our society changed. In 1948, a black woman, Ada L. Sipuel, applied for admission to the University of Oklahoma law school.

In 1948 this law school only admitted white students. The University informed Sipuel that it was in the process of creating a separate law school which black students would be able to attend. She was also told that she could not attend law school until the separate facility was completed. This case went to the Supreme Court and the Court held that the manner in which the University of Oklahoma managed the situation was in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.¹⁶

In 1950, Herman M. Sweatt, a black man applied to the University of Texas Law School. This situation was similar to the Sipuel case in as much as the University of Texas in 1950 only admitted white students. Sweatt was denied admittance to the law school and his case eventually went to the Supreme Court. In the meantime, the University of Texas quickly opened a small segregated law school and Sweatt was admitted. Sweatt was the only student in the entire segregated law school. "The Supreme Court ruled that

¹⁶Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1986), 265.

the alternative law school did not match the facilities, faculty, and academic quality of the University of Texas law school and did not provide an equal education."¹⁷

Issues regarding racial injustice would continue to haunt the national scene for decades to come. Attorneys representing school boards would find that as time went on these kinds of issues would surface and would play a part in shaping their roles and the types of cases in which they would become involved.

At the time of these events, Marvin Glink was just beginning his career as an attorney. Mr. Glink spoke about the beginning of his career. "I started practicing law in 1951. For the first ten years I did all kinds of general practice. I did corporate, and real estate, business, probate, bankruptcy, the whole gamut of general practice for the first ten years."¹⁸ In 1951, school boards in need of legal representation, were for the most part, using attorneys who did not specialize in school law because school law as a specialized field did not yet exist.

¹⁷Ibid.

¹⁸Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

In 1954 a landmark case in school law with regard to racial segregation took place. In Brown v. Board of Education the Supreme Court of the United States held that

Segregation of white and colored children in public schools has a detrimental effect upon colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of the law, therefore, has a tendency to retard the education and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.¹⁹

Thurgood Marshall, the NAACP attorney in charge of the case, was successful in defeating the separate but equal type of mentality that had been established in Plessy v. Ferguson. Many people feel that this was really the beginning of the civil rights movement of the 1950s and 1960s. In the future this case would also be important in issues and situations involving attorneys representing school boards with regard to racial segregation. People living in the United States during this time were beginning to notice that things were starting to change in this country. In Montgomery, Alabama, in 1955 a woman named Rosa Parks was arrested for refusing to give up her seat on a bus to a white man. The Reverend Martin Luther King Jr. led his community in a boycott of the Montgomery Alabama bus company. The

¹⁹Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), 265.

boycott finally ended when the Supreme Court expressed the opinion that the type of racial segregation which was occurring in this situation was unconstitutional.²⁰

In 1957 a very sad episode in our history took place in Little Rock, Arkansas. The school board in Little Rock attempted to desegregate its school system by admitting black students to an all white high school. The Governor of Arkansas claimed that this action had caused a threat to public order. He then attempted to prevent the students from attending the high school by calling out the Arkansas national guard. A federal judge ordered the school board to carry out the plan to desegregate its school system. That fall, when the black students tried to go to school, an angry mob comprised of white people threatened them. Faced with this sad and frightening crisis, school officials decided to send the black students home. Finally, President Eisenhower federalized the Arkansas national guard and sent the 101st Airborne Division to Little Rock to protect the students who finally gained access to the high school.²¹

It is important to understand the trauma, anger and feelings of hatred that accompanied these incidents. Our country was entering a period in which civil unrest would become the norm and this climate affected the work that

²⁰Ibid.

²¹Ibid.

attorneys representing school boards would do. From 1945 to 1960, people living in our society were going through a transition period or a period of adjustment. They were really adjusting from war to peace. Attorneys representing school boards would find that their role would evolve over time. This role evolution would, in effect, be related to the kinds of changes that were occurring in our society. The middle class expanded dramatically. With this dramatic expansion of the middle class, ethnic segregation for the first time began to decrease. However racial segregation and bias did not decrease in intensity at all.

Although racism was deeply embedded in American life and law, the experience of war heightened the contradiction between the reality of racism and the ideals of American democracy. The painfulness of the contrast was presented most acutely to blacks, particularly the one million blacks who served in the armed forces. They had encountered racism in their daily lives before the war, but as members of the armed services, they found themselves in the odd position of being discriminated against by the American government, a government that daily proclaimed that the goal of the war was to defend the principals of democracy and to defeat malignant exponents of racial superiority.²²

Socioeconomic changes and de facto segregation were important events which took place between 1945 and 1960. The cold war era also began soon after the conclusion of World War II, and it led to an attitude that, with respect to education, students had to be warned and educated about the

²²Diane Ravitch, The Troubled Crusade, American Education 1945-1980 (New York: Basic Books, Inc., 1983), 19.

dangers of Communism. Religious issues and how their relation to education began to emerge in this period as well. Everson v. Board of Education and McCullum v. Board of Education are both good examples of case law which symbolized the growing controversy related to aid to religious schools. The court in the Everson case authorized transportation reimbursement to parents of private, sectarian school children.²³ In the McCullum case, the Supreme Court ruled that a program of religious instruction within public schools during school hours is unconstitutional.²⁴ Attorneys working on behalf of school boards would see their role change as a result of these types of cases.

In the late 1940s and early 1950s, racial bias would continue to plague our society. Case law related to this issue pointed to the serious nature of this problem which would reoccur frequently as time went on. The previously discussed Brown v Board of Education as well as Sweat v Painter,²⁵ Bolling v Sharpe²⁶ and many others can be viewed as symbolic of the kind of

²³Perry A. Zirkel, ed. A Digest of Supreme Court Decisions Affecting Education (Bloomington, Indiana: PHI DELTA Kappa, 1978), 17.

²⁴Ibid., 18.

²⁵Ibid., 79.

²⁶Ibid., 81.

problems African Americans had been forced to live with and to struggle with over the years. All these cases illustrate that denied admission to a school on the basis of race is unconstitutional.

As the decade of the 1960s approached, attorneys representing school boards would see their role expand because they would be drawn into cases dealing with racial segregation and racial bias. Montgomery, Alabama, and Little Rock, Arkansas, will forever be etched in the minds of students of recent American history as symbols of the fight for racial justice when one considers how African Americans suffered in the struggle for equality and freedom in these places during this period in history.

It has been said that a society should not attempt to solve its problems by using its children as pawns. Be that as it may, the fight for racial equality and freedom would often take place in our nation's schools. Because of this situation people like Louis Ancel, who, during this period in history, were beginning to practice law on behalf of school boards would actually see the role with which he started his career change as time went on. School attorneys were not, then, working exclusively in the field of school law. As Mr. Scariano observed, "School law was but a drop in the bucket to them compared to their other practice."²⁷

²⁷Anthony Scariano, interview by author, 19 January 1993, Chicago, Illinois, tape recording.

On January 20, 1961, a very bright sun glistened against the pure white snow which had blanketed Washington the night before. The weather was cold and windy. That day the stage was set for the beginning of a Presidency that represented the coming of age of a new generation of Americans. A Protestant minister, a rabbi, a Catholic cardinal and a Greek Orthodox archbishop prayed for guidance, and all four emphasized freedom of religion. The man who stepped up to take the oath as chief executive was the youngest man ever to be elected president. Many noted his youthfulness and, as they spoke of the hopes for his administration, they did so in terms of a new kind of politics that would be appropriate to the needs of a new generation of citizens, and a new world. "The inauguration of JFK [John Fitzgerald Kennedy] as 35th president of the United States will stand as one of the most dramatic political events of this century" ²⁸ The even more dramatic event that was to occur on November 22, 1963, would cause people to remember the Inaugural Address of that January day with a special regard.

John F. Kennedy became president at a time when the tensions created by the cold war were increasing. However, one of the areas that was considered important during his administration, known as the New Frontier, was education. In his proposals regarding school aid President Kennedy

²⁸William Benton, The Annals of America 1960-1969 (Encyclopedia Britannica, Inc., 1969) 263.

"called for legislation to provide federal funding for public schools, higher education, basic research, and medical training."²⁹ Many people were opposed to this legislation. Among them were Roman Catholics who were angry because aid to parochial schools was not part of the plan. The issue regarding separation of church and state would play a part in the evolution of the role of attorneys representing school boards. As time passed President Kennedy was committed to supporting higher education and he demonstrated that fact when he stated: "Now a veritable tidal wave of students is advancing on our institutions of higher education . . . The future of these young people and the nation rests in large part on their college and graduate education"³⁰

School Law in the Sixties

While all of this was occurring, many attorneys who would eventually specialize in school law were just beginning their professional careers. Marvin J. Glink, attorney at law, was one of those individuals. "I got into municipal law in the sixties. I know that when I got into the municipal field in 1961, the leading person that I found in the field [of school law] was Lou Ancel, my partner. It was through Lou that I became involved."³¹ Mr. Glink went on

²⁹Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1986), 291.

³⁰Ibid., 292.

³¹Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

to explain that attorneys representing school boards in the early 1960s did not specialize exclusively in that field.

In 1961 I became the corporation council for the village of Skokie. I served in that capacity for four years and met Lou at that time. About the third year, in 1963, we agreed that at the end of the year, my brother and I would join his firm. From then on I was involved in doing municipal work. We did all kinds of municipal work. We represented Triton College, we represented Oakton College. Niles Township High School was one that I handled very early on through the turbulent sixties, very turbulent.³²

We can see that in the early sixties attorneys representing school districts were busy doing other kinds of legal work as well as practicing school law. In this particular case, the field of school law at this point in time was really considered by people working in the field to be part of municipal law, almost a branch of municipal law. We can conclude that the role was not as extensive and time consuming as it would later become. As Mr. Glink said, the 1960s were a very turbulent time.

In 1965 President Johnson was successful in seeing to it that Congress passed the Elementary and Secondary Act of 1965. As a result of this act, more than \$1 billion in federal aid went to education. During his administration Johnson declared a 'War on Poverty'. Part of Johnson's 'War on Poverty' effort was directly related to The Elementary and Secondary Education Act of 1965 in as much as "the major thrust of the ESEA sought to

³²Ibid.

equalize educational opportunities, especially in inner city and rural poverty areas.³³ The education of the disadvantaged would become the main emphasis of ESEA in 1965.

In 1964, another legislative milestone was enacted. The Civil Rights Act of 1964 was passed and as a result of its passage, federal protection in many areas was guaranteed:

It not only gave federal protection to voting but guaranteed civil rights in employment and education. It guaranteed equal access to public accommodations and sought to prevent hiring discrimination by employers who held government contracts . . . Significant for education, the act empowered the federal government to file school desegregation suits and to withhold federal funds from school districts involved in racial discrimination.³⁴

The trend toward racial desegregation in schools was also helped by a Supreme Court decision which took place in 1964. It was Griffin v. the School Board of Prince Edward County. A situation existed in which a public school system had been forced to close its schools because of the refusal of the board to levy taxes. The Prince Edward School Foundation developed a school system in which only white students were allowed to attend. The Supreme Court held that closing the public schools constituted a violation of the equal

³³Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), 294.

³⁴Ibid., 296.

protection clause of the Fourteenth Amendment because black children were excluded from schools which received public funds.³⁵

Another program, supported by the Johnson administration, was designed to offer opportunities to disadvantaged students. It was the Economic Opportunity Act of 1965. As a result of this act, Operation Head Start was developed. Operation Head Start was developed to offer enrichment programs to economically disadvantaged children before they entered school. Again, the thrust of this legislation was to support equity of opportunity through education.

In 1964, another major factor which would plague the Johnson administration was the war in Viet Nam. It also affected attorneys representing school boards. In 1964 Lyndon Johnson requested of Congress that the Gulf of Tonkin Resolution be approved. The resolution eventually allowed President Johnson to "take the necessary measures to repel any armed attack against the forces of the United States."³⁶ In the end, 500,000 American soldiers were sent to Viet Nam. This conflict was tragic in many ways. First of all, the loss of life which occurred as a result of Viet Nam was staggering. The pervasive atmosphere that seemed to devour our nation

³⁵Ibid.

³⁶Ibid.

during that period in time was in itself tragic. The New Yorker magazine did a fine job of expressing the mood of the nation in 1967:

The United States at the end of 1967 was a deeply troubled nation. The coming of fall had put an end to the riots of the long hot summer, but no one was so optimistic as to expect peace in the cities in the summer ahead. The basic problems of the Negro and of the poor in general were still unsolved, and in fact they seemed to become more desperate as time wore on. The young were disaffected, crime was on the upswing, the space program was not going well and inflation threatened to undermine the dollar, which was also subjected to severe pressures from abroad. But all of these problems paled beside that of Viet Nam. There was hardly an individual of high school age or over who was without an opinion on the subject, and there were many who feared that the war bad as it was, would get worse before it would get better.³⁷

Looking back on this period in our nation's history, Mr. Glink expressed his thoughts with regard to his role as a school district attorney and the relationship between what was happening during that period and the role of attorneys that evolved:

There were a lot of things going on in the sixties that created the atmosphere for agitation. First of all, teachers were beginning to organize and beginning to form teachers' unions or the IEA. That became a real problem. Then you had the Viet Nam War, and that agitated a lot of people, and we had a lot of people coming into education for one reason only, and this was to avoid being called into the draft. As a result you had a lot of militants coming in at that time, contributing into it. Then of course you had the ones who were emulating the things that were happening, and they joined right in. We want freedom of expression. We want to be able to write whatever we want to write in our newspapers, and nobody should censor our

³⁷William Benton, The Annals of America 1960-1969 (Encyclopedia Britannica, Inc., 1969), 544.

newspapers. For example, 'since it's a student newspaper we should be able to do anything we want.' Then we had the whole hippie culture.³⁸

In 1967, Herbert A. Deane, the vice dean of the graduate facilities at Columbia University wrote an article in which he explained the attitude of many college students during this period in time:

I have been increasingly concerned in the last year or so about an attitude (or perhaps, collection of attitudes), among some students in the present generation, of rejection and hostility towards many if not all, established institutions, organizations, and standards . . . The new student attitude, and, for want of a better attitude, let me call it the 'anarchistic' or 'nihilistic' attitude, seems to reject all existing institutions and patterns of behavior.³⁹

The two sentiments are strikingly similar to the opinion expressed by Mr. Glink. Times were changing, and, along with those changes, the role of attorneys representing school districts was changing as well.

Mr. Glink spoke at length about specific situations he had encountered professionally during the sixties as a young attorney representing school boards.

During the sixties--the turbulent sixties--we had a number of teachers who were very much activist types. They had riled up the students. We had a number of student strikes, and teacher strikes, and it was an

³⁸Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

³⁹William Benton, The Annals of America 1960-1969 (Encyclopedia Britannica, Inc., 1969), 468.

experience. There were three of them who were the ring leaders. We ultimately had to take action against them and go through proceedings.⁴⁰

Mr. Glink described the incident in which action was taken against the three teachers in more detail:

Two were tenured teachers. One was not. One was a probationary teacher and the other two were tenured teachers. As a sideline to that, one of those teachers ultimately became a lawyer, and, unfortunately, died very young. We had to deal with a lot of problems in those years. For example, a growth explosion in Skokie; in Niles Township, we had to provide for a new high school. Then in addition to all of this, the Viet Nam War, and then all of the agitation that took place in the sixties. Then there was the students' rights period, where everybody was saying that students had all the rights in the world. The feeling was, don't tell them what they can do and don't tell them what they can't do, and so I went through the whole period. It was an interesting time.⁴¹

The case regarding the dismissal of the teachers is an excellent example of the correlation between historical events (civil unrest, and the war in Viet Nam) and the manner in which attorneys representing school boards and their role was expanding. Mr. Glink provided additional information regarding the case of the teacher dismissals:

These particular teachers had gone way beyond the bounds that any teacher would ever consider going. [They] were disrupting to the school. They were trying to turn the students into that and after school they would throw parties for them. Parents were very upset, and there were a whole bunch of things they were doing. They got directives not to do it and they continued to do it. They would agitate and foster disruption in the school district and you know there's a limit to how much of that

⁴⁰ibid.

⁴¹ibid.

you can take. Fortunately, it seems to have abated. There were some rough times there.⁴²

The anger which seethed through our nation and throughout the decade of the sixties erupted all too often in violence in what seemed like a never ending bad dream. All of these events were related to the changes in the role of attorneys representing school boards. Mr. Glink spoke about his experiences as a school district attorney in the sixties with regard to student activism:

We had some cases involving students' newspapers, involving the right to say whatever they wanted. The right to not have their lockers searched, things of that sort. I remember a couple of cases. The A.C.L.U. became involved in our activities. If I have a little bias, it's about them getting into things that I don't believe they have a business being involved in. There were times when people were perfectly capable of defending themselves and along comes the A.C.L.U. and says we are going to interject ourselves in your disputes and we'll pay the freight. That's contrary to my feelings. However, poor people, and people whose rights are being trampled on, then the A.C.L.U. can do a lot of good. But in this area, I don't feel they belong. We had our battles over the years.⁴³

Religious Issues

The concept of separation of church and state has been important throughout the history of our country. This idea dates back to the times of the founding fathers. In recent history, there have been examples of case law in which the issue of church and state have surfaced repeatedly. For example,

⁴²Ibid.

⁴³Ibid.

in the late forties in Everson v. Board of Education, the Supreme Court held that providing bus transportation to parochial school students is not a violation of the establishment of religion clause of the First Amendment of the United States Constitution.⁴⁴ In 1962, the subject of prayer in the public schools came before the Supreme Court; in the case of Engel v Vitale, where the Court held that praying in public schools was not constitutional.⁴⁵

A quote by Mr. Marvin J. Glink regarding religion, public schools, and school board attorneys will be helpful to consider at this point.

We have--I can't recall which school--but from time to time, we would have issues come up about, can we put up this kind of religious symbol? Can we have the singing of Christmas songs at school, things of that sort. In municipalities, the issue is can we use this ground for putting up a Christmas tree or Menorah, or whatever. Frankly, on the issue, even today, the Supreme Court has vacillated and waffled so much back and forth that it's very difficult to give guidance and advice. They say the Christmas tree is secular and it's not a religious symbol. I find that very difficult and hard to understand. The same thing about the Menorah. They say that's just the season. Well, I think they're wrong. I think if we have true separation of church and state, there should be true separation. There's enough of the symbolism out there that you don't have to worry about it. The Court keeps going back and forth and they try to please everybody, and you're never going to please everybody. But, be that as it may, we follow the dictates of the Supreme Court. There are some things they're in agreement on. You can't have a cross, and now, you can't have a prayer in a graduation ceremony. They've come down and

⁴⁴E. Edmund Reutter, Jr., Ph.D., The Law of Public of Public Education 1945 to 1980. (New York: the Foundation Press, Inc., 1985).

⁴⁵Ibid., 32.

they've finally taken some position on some subjects so there's at least a little predictability until the court changes.⁴⁶

This is a very interesting portion of the interview that was conducted with Mr. Glink. It is clear that the intensity of some of his statements indicates that the role of attorneys representing school boards was changing and expanding. It is also clear that as issues in which school board attorneys were involved became not only more numerous, but also more complex in nature, the role was expanding from that of a part-time job to a full time area of specialization in the field of law.

In the 1960s many people experienced changes in all facets of their lives. Mr. Ralph Gebert, the former superintendent of schools in Norridge District 80, served in the capacity of superintendent of that district from 1968 to 1989. In an interview he said that in the midsixties larger districts were beginning to have experience in dealing with unions.⁴⁷ At the same time, Mr. Glink was a school board attorney in the context of dealing with issues involving labor negotiations. With the advent of collective bargaining, his office was involved at the forefront of that activity with a number of municipal governments, and school districts.

⁴⁶Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

⁴⁷Ralph Gebert, interview by author, 5 May 1992, Norridge, Illinois, tape recording.

I think the school districts probably started the whole process of collective negotiations earlier than the municipalities and . . . laid the groundwork for the subsequent legislation which for years was kept out. Mayor Daley, bless his soul, was the strong force in making sure we didn't have collective negotiations except by voluntary agreement.⁴⁸

Special Education

Mr. Glink also recalled his involvement as an attorney with regard to special education and the correlation between special education and changes in the role of attorneys representing school boards.

Over the years we have had a number of disputes in special education where [there were questions] of placement, the question of where there has been a proper staffing, is the child in the right setting? As the federal law has changed, and the rules, which seem to have broadened the parental rights in the area and the requirement that there be certain types of special education programs provided, and we got confrontation. Parents, I think, don't want to generally always recognize that their kids have these certain special needs and in some cases want more benefits for their kids, and I can understand that. The district, on the other hand is facing the question of expense, and dollars, and what can they do for the best price available. So, you get those confrontations. You get hearings that are held, then you get courts intervening to decide these issues, and it really shouldn't be a judicial decision. It should be able to be handled internally. Most of these situations are handled through the due process system.⁴⁹

The role of attorneys representing school boards was expanding and changing. What was once a part-time field was becoming a great deal more involved and a great deal more complex.

⁴⁸Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

⁴⁹Ibid.

During the interview, Mr. Glink spoke about current trends in the field of school law. The interesting and perhaps most valuable portion of his discussion regarding this topic is that one can easily demonstrate the extent to which the role of attorneys representing school boards has expanded over the years. Cases in the schools dealing with tort liability are a very major portion of his practice now. Starting in 1987, liability insurance became very difficult to obtain. Mr. Glink and Mr. Ancel's office was probably the first to start a self-insured pool in Illinois.

It came about through some people in Contact who came to see me to talk about trying to get something like that started. That was about 1986 or 1987 . . . We had a series of meetings and we developed the first intergovernmental management agency in Illinois (I.R.M.A.). Well, from that, a lot of others have grown. We represent a good number, almost all of them. We helped them get formed and handle their defense work. Schools are definitely one of the pools we represent. We have a pool for school liability. We have a pool for school health and accident claims. We have a number of issues that come up from time to time. Liability coverage, for example: should this district pay this expense, or does it belong somewhere else? We work on the interpretation of the rules with regard to dual insurance. For example, you have a husband and wife with both spouses working. Which spouse is liable and which insurance company is liable? So you had the development of what is called the birthday rule. The courts have said that whichever coverage, whichever birthday is the earliest with regard to the dispute, that insurance has the primary responsibility.⁵⁰

Mr. Glink continued the discussion with some issues regarding defense of schools in the area of liability:

⁵⁰Ibid.

We do a lot of defense of schools. We've been successful at getting legislation through the legislature that has been helpful in limiting liability, and that occurred in 1988 or 1989. That has been a help but there are still law suits that are filed, and still the need for defense in the school areas that has to be asserted on behalf of the school district. As a matter of fact, we've had many negligence, liability cases, mostly in the physical education area when you haven't properly supervised the kids, or when you haven't provided the right equipment. Those always come up from time to time.⁵¹

This is a good example of attorneys who have taken a very positive leadership role on behalf of the school districts they represent. Mr. Glink's firm was able to help in the area of working for legislation that would limit the liability and the expense to school districts which always accompanies liability cases. We can see that the role of school board attorneys has continued to expand and change in relation to events that have occurred and are continuing to occur in our society. Mr. Glink also spoke about what the role of attorneys representing school boards is like today compared to what it was at the beginning of his career as a school board attorney.

I started my career as an attorney in 1961. Today the issues are different. There is more emphasis on the civil rights act. Now there is a lot of emphasis on the Americans with Disabilities Act. I don't see as many teacher dismissal cases as we used to see, which may mean the system is getting better and that the teachers are performing more toward their expected roles. You still have contracts that have to be reviewed. You have funding problems. We have bond issues that come up from time to time, all which involve attorneys, and the attorneys have

⁵¹Ibid.

to be available to service the district. You have collective bargaining which is now growing and becoming more sophisticated.⁵²

Mr. Glink discussed the issue of state mandates and regulations and how, in his opinion, these factors are related to the expansion in the role of attorneys representing school boards.

You have certain parameters which are set by the state as opposed to before we were making our own ground rules and working our way through them. Maybe the school boards are getting a little more sophisticated. Maybe we're getting better school board members who are coming into representation. Maybe the administrators are getting better. It seems to me that the system is working better in the suburban areas. You can't say the same for Chicago, because we keep reading about the problems in Chicago and they are monumental.⁵³

As he thought about the role of attorneys representing school boards, Mr. Glink spoke about the period when his firm represented the Chicago Principal's Association. The fact that school attorneys were involved in such representation supports the concept that as changes in society occurred, the role of school attorneys evolved as well. "Interestingly . . . for a number of years we represented the principals in Chicago--the Chicago Principals Association. We've had a lot of law suits against the Chicago Board of Education involved with the principals, so we've seen both sides of the issues."⁵⁴ Naturally, as Mr. Glink explained, since the Chicago principals had

⁵²Ibid.

⁵³Ibid.

⁵⁴Ibid.

been involved in many law suits against the Chicago Board of Education, attorneys representing the Chicago Board of Education became busier as time went on as well. The role of attorneys representing school boards has changed, and, according to Mr. Glink's perception of the manner in which things have changed since he and Mr. Ancel first worked together, the changes experienced by the people working in the field of school law are related to changes and events which have taken place in our society.

Chapter V provides information about the current status of the role of attorneys representing school boards.

CHAPTER V

CURRENT STATUS

The field of school law has undergone a dramatic and remarkable change. Mr. Scariano related his views that in the late forties and early fifties municipal lawyers and attorneys representing businesses and commercial establishments represented school boards. Their school board involvement was a very small part of their total practice at that time. Currently, the role has expanded. Mr. Scariano's perception is that segregation issues, the decade of the sixties, special education, labor issues, the Illinois Education Association, and increased litigation in our society have all led to the evolution of school law as a full-time area of specialization. Mr. Franke agreed that, today, school law is a full-time endeavor. Population growth, challenges to teachers and administrators, the Illinois Legislature, the U.S. Senate, the sixties, labor negotiations, the Tenure Act, special education, poor economic times, board of education members with hidden agendas, and selfish attitudes of people in general, have all contributed to the evolution of the role. The turbulent sixties, religious issues, special education, and liability issues were important issues and events from Mr. Glink's point of view. Currently

attorneys representing school boards comprise a very specialized group of practitioners in the field of law. Humphrey and Smith have stressed the fact that today there are many specific areas of expertise in which school board attorneys need to be proficient.

School District Expectations

School Boards should expect their attorneys to be knowledgeable and have experience in the following areas: school board liability, school board insurance plans, civil rights issues, employee rights, student rights, rights of handicapped students, teacher and principal evaluation, teacher and principal nonrenewals, teacher and principal dismissal cases, teacher unions and collective bargaining, recent and pending charges in federal law, matters affecting the schools at the federal level, recent and pending changes in state law, recent and pending changes in state board of education regulations, open meeting law, bidding requirements, procedures and contracts, legal rights of professional and nonprofessional personnel, school budgets and the state laws affecting school budgets and fiscal control, and documentation to protect the school system from potential litigation.¹

¹Suzanne W. Humphrey and William Smith, "How to Make Sure Your Attorney Your School Board's Best Friend," Illinois School Board Journal, (September/October 1992): 14.

The length of this list certainly suggests that attorneys representing school boards need to be quite proficient in so many areas that an individual practicing law can really not expect to work in the field of school law on even a part-time basis without having mastered all of the above mentioned areas of expertise. These areas of expertise suggest that the role of school board attorneys has expanded to such a degree that it really has evolved into a full time area of specialization within the field of law.

In the same article, Humphrey and Smith described the results of a survey they conducted which dealt with the role of school board attorneys in Illinois. In February of 1992, the survey was sent to 210 Illinois school districts which were randomly selected. One hundred sixty-seven districts (78 percent) responded to the survey.² According to Humphrey and Smith, the level of participation in this survey indicated a great deal of interest in this topic. Based on responses from this survey, it was determined that, currently, practices with regard to the role of attorneys representing school boards, vary from district to district. Just over half (57 percent) of responding districts do not have a board policy on hiring or the responsibilities of the attorney. Nearly half do not use an attorney for bargaining. Some 18 percent use an attorney 'very little'. Only 3 percent use a full time or part time 'in house'

²ibid.

attorney. Almost three quarters, (71 percent) 'usually' follow the advice of their attorney, and 28 percent always do. Only 8 percent of the boards have an attorney at most of their meetings.³ Humphrey and Smith continued to explain the role of attorneys representing school boards in their article and described how school district personnel felt that they were using their school board attorneys correctly with regard to the frequency of contact between their school district and the attorney representing their board.

Ninety percent think they use their attorney 'correctly', in terms of the degree of use. In half the districts, that meant the superintendent met with the school board attorney, other than during a board meeting, one to four times during 1991. In 20 percent of the districts, the superintendent met with the attorney five to nine times. In 15 percent of the districts, the superintendent didn't have any meetings with the attorney during 1991. In 86 percent of the districts, the superintendent is the only person who contacts the attorney. In another 10 percent, only the school board president contacts the attorney.⁴

Humphrey and Smith further describe compensation methods and expenses related to legal work that attorneys representing school boards provide for school districts. The most common compensation method of the

³Ibid., 15.

⁴Ibid.

districts is an hourly rate for actual use. Some 65 percent of the districts report yearly attorney expenses of less than \$10,000. Five districts reported more than \$100,000 in attorney expenses.⁵

Humphrey and Smith describe additional areas in which attorneys spend time on behalf of school districts. Attorneys speak at board meetings only when specifically requested by the board in 61 percent of the responding districts. The superintendent is an important source of legal advice, providing 'very much' legal advice in 46 percent of the districts and 'some' legal advice in 42 percent.

. . . The attorney is used most often for personnel matters, collective bargaining, school board policy, responding to litigation and student discipline issues. Less frequently mentioned were special education, bond sales, written legal opinions, review of contracts, and initiating litigation.⁶

In an article by Stacie Rissmann Joyce which appeared in the NSBA Council of School Attorneys publication entitled "The School Attorney: A Practical Guide to Employing School District Legal Council," Joyce described current trends in school law:

School attorneys view themselves as being more involved in school district decision making and having a larger amount of responsibilities than did superintendents and school board members. Thus, a better organizational network with written policies to define job description and employment process should be implemented. This is especially critical

⁵ibid.

⁶ibid.

for districts with more than 1500 students, as school attorneys are more frequently employed or consulted in larger districts.⁷

Joyce found that with regard to frequency of involvement, the following areas were areas that attorneys representing school boards address on behalf of the districts that utilize their services: board procedures, personnel, district building communication, buildings and grounds, student finance, curriculum, desegregation, public school-private school contracts.⁸

This information supports the notion that the role of attorneys representing school boards has evolved over the years. As we have seen, this evolution has been correlated with changes and events that have occurred in our society. The sixties, the women's rights movement, an increase in teacher militancy, unions, challenges to authority, and a faltering economy were all perceived as important factors in the evolution of the role of the school board attorney.

Selecting an Attorney

Selecting a school board attorney is an important task that must be carried out carefully. In an article called "Checklist and Policies for selecting a School Attorney," Richard A. Schwartz, Tharington, Smith, and Hargrove explain the importance of considering several factors when selecting an

⁷Stacie Rissmann Joyce, Ph.D., "The School District Attorney: Trends of Legal Involvement in Education," NSBA Council of School Attorneys, 1986, 18.

⁸Ibid., 21.

attorney to represent a school board. One very important consideration to keep in mind is accessibility. "Your attorney should be readily available as needed to consult with your administrators."⁹ It is also important to consider whether or not a firm has experienced backup attorneys that can be called into service in the event that such a necessity arises.

Schwartz describes the importance of ensuring that several areas of expertise are within the realm of experience in the firm that is chosen to represent a school district. The following areas are considered important by Schwartz, and the list exemplifies the extent to which the role of attorneys representing school boards has expanded. Your attorney should be knowledgeable and experienced in, and should be up to date, regarding the following matters: school board liability, school board insurance plans, civil rights issues, employee rights, student rights, rights of handicapped students, teacher and principal evaluations, teacher and principal nonrenewals, teacher and principal dismissal cases, teacher unions and collective bargaining (this is an item which will continue to become increasingly important in the next several years).¹⁰

⁹Richard A. Schwartz, "Checklist and Policies for Selecting a School Attorney," SBA Council of School Attorneys, (NSBA, 1986), 50.

¹⁰*Ibid.*, 51.

Schwartz continues to explain additional items which need to be considered with regard to substantive knowledge when school boards are in the process of determining which attorney or which law firm will best meet their needs: recent and pending changes in federal law, matters affecting the schools at the federal level, recent and pending changes in state law, recent and pending changes in state board of education regulations, open meeting law, bidding requirements, procedures, and contracts, legal rights of professional and nonprofessional personnel, school budgets and the state laws affecting school budgets and fiscal control, documentation to protect the school system from potential litigation.¹¹

Schwartz believes that it is important to choose an attorney who has "active memberships in organizations designed to further the interests and goals of school boards and administrators with respect to the competent and efficient operation of the school system."¹² He also supports the notion that a school district should employ attorneys considered to be leaders by their peers. Affiliation with the state school board association is considered to be important and should be remembered during the selection as well.

The kinds of responsibilities that need to be taken into account are also considered to be important and should not be overlooked. The attorney

¹¹Ibid.

¹²Ibid.

should be available to represent the board of education and school district effectively at state and national conferences. The school attorney should be able to advise the board and administration on needed policy changes before these policies present problems. The attorney should be able to provide in-service training and workshops to board members and school staff.¹³

The manner in which these responsibilities are outlined by Schwartz points out the extent to which the role of attorneys representing school boards has evolved and, in fact, expanded. In addition to responsibilities, practical skills are important and should be considered as well.

The attorney should have a broad legal background with knowledge and experience in the state and federal courts and should have familiarity with all court procedures and court officers. The school attorney should be knowledgeable and experienced in dealing with specialized documentation common to school systems in order to be able to protect the school system from potential liability and litigation.¹⁴

The last comment, which deals with the need for expertise in the area of specialized documentation common to school systems, is another indication of how the role of school board attorneys has expanded. This type of

¹³ Ibid.

¹⁴ Ibid.

situation is quite different from the era in which school district attorneys worked with school board matters on a part time basis.

Finally, Schwartz emphasizes that attorneys representing school boards should not be 'overly political' because a situation in which a school board attorney becomes very involved in politics could create a scenario in which people might fight against a school board because of the attorney's involvement in local politics.

Current Job Descriptions

A sample job description of a school attorney is included in the NSBA Council of School Attorneys. The job description is informative, for our purposes, from the standpoint of illustrating the manner in which the role of attorneys representing school boards has expanded:

The general responsibility of legal counsel is to render service on legal issues concerning governance, finance, property, pupils, employees, liability, and other legal concerns of the school district. Legal counsel shall represent the corporation in litigation and in arbitration proceedings between the corporation and its various collective bargaining units. Legal counsel shall be responsible for preparation of legal opinions and other legal documents, including pleadings, briefs, contracts, and leases. Legal counsel shall advise the board and staff regarding the impact of current federal and state legislation, and may assist with the planning for implementation of current legislation as it impacts on the school district. Legal counsel shall advise the board and staff regarding the impact of administrative and judicial decisions upon the school district. Legal counsel shall coordinate and assist with hearings before the Board of Education including expulsion of students, nonrenewal and dismissal of district personnel, special education appeals, Title IX Appeals, and student record appeals. Legal counsel shall advise administrative personnel in areas of legal concern in the day to day operation of the

school district. Legal counsel shall assist the board of education in the conduct of meetings and may assist the secretary as parliamentarian at regular meetings of the board of education. Legal counsel shall perform such other duties as may be directed by the board or the superintendent.¹⁵

It is very easy to see, based upon this job description, that the role of attorneys representing school boards is a very specialized role which has developed and expanded over the years.

Perhaps one of the most interesting correlations to consider in regard to the relationship between changes in society and the evolving role of attorneys representing school districts, according to the manner in which the attorneys perceive the situation, is the relationship between the proliferation of teachers unions and the evolution of the attorney's role. Originally, the IEA was administration dominated. When teachers would ask for collective bargaining, they would get turned down. Eventually, the IEA threw all the administrators out and teachers began to feel more comfortable with the notion that they were union members.

As a result of the growth of teachers unions, contract negotiations are very common today and are also related to the expansion in the role of attorneys representing school boards. Contract negotiations are adversarial in

¹⁵Edgar H. Bittle, ed., The School Attorney: A Practical Guide to Employing School District Legal Counsel, (NSBA, 1986), 64.

nature but the process does not necessarily have to be a negative experience for all of the people involved.

Contract Negotiations

School superintendents, school board members, and attorneys representing school boards regularly find themselves involved with teachers unions in contract negotiations. Traditionally contract negotiations have been adversarial in nature because these are situations in which people are on opposite sides of issues. School board attorneys, as we have seen, are expected by some school boards to act as the chief negotiator for their respective school districts. If negotiations become experiences in which the union and the board become overly hostile toward each other, the result can be that a kind of chain reaction of bad feelings can occur. A negative chain reaction of this sort can affect board members, the union negotiating team, the staff in the school district, and unfortunately, the students in the district as well. Students can be adversely affected as a result of a pervasive negative school climate resulting from extremely negative bargaining sessions.

R. A. Hansen, has stressed the importance of proceeding from a standpoint during contract negotiations that fosters collegial bargaining.¹⁶ Attorneys representing school boards, school board members, and union

¹⁶R. A. Hansen, "Good-Bye Adversarial Negotiations," American School Board Journal (August 1989): 176.

negotiators will do well to keep these concepts in mind as they approach the bargaining table. These issues support the notion that the role of attorneys representing school boards has evolved over the years. The evolution has been related to changes that have occurred in society. Hansen supports the idea that a good way to assure the union team that is trying to be fair is to utilize objective data when discussing salary increases. Comparing similar school systems for salaries is useful. Analyzing percentage increases from the standpoint of the relationship between income and the increase of revenue (or the decrease of revenue) from the state is appropriate.

Eiler makes specific suggestions designed to develop an atmosphere of mutual cooperation during negotiations. These concepts are applicable to union members, school board members, and attorneys representing school boards as well. The specificity of these concepts indicate and point to the fact that attorneys representing school boards are really in positions which take up a great deal of time.

Parties sitting on both sides of the bargaining table are advised to be patient and succinct. Good preparation for bargaining is vital.¹⁷ This too points out the facts regarding the amount of time attorneys representing school districts have to spend on behalf of their clients. From the outset,

¹⁷E. E. Eiler, "Follow the Golden Rules and Negotiate a Solid Labor Contract," American School Board Journal (August 1988): 176.

negotiations need to be approached from the perspective of a problem solving mentality.

According to McGinnis,¹⁸ an important factor to keep in mind is, that when school board attorneys are involved in contract negotiations, it is helpful to the process if excessive school board involvement can be avoided. It is best that professional negotiators and/or administrators be involved in the bargaining process. By remaining "above" contract talks, boards are less likely to be influenced by local political pressures. Boards, it is hoped, will then be in a position to make objective decisions in which priorities are based on the needs of students.

According to Cox, the win/win model of negotiating is a good way to protect and/or improve the organizational climate of a school district.¹⁹ In January of 1987, negotiations led to very bitter feelings at Glenbard High School District 87. To make matters worse, Cox states that at that time the district was facing a \$10 million deficit. By engaging in the win/win method of bargaining, the district and the union completed contract negotiations in three months. From the perspective of teachers, this style of bargaining is one in which they feel good about the process. Attorneys representing school

¹⁸I. McGinnis, "Board Members Should Give the Bargaining Table a Wide Birth," American School Board Journal (August 1989): 176.

¹⁹M. Cox, "Here's Why We No Longer Dread Contract Negotiations," American School Board Journal, (February 1988): 177.

boards who become involved in contract negotiations for their school districts and administrators who are also involved in the process will do well to keep in mind the concept that this type of situation is better in the long run for organizational climate. A concept closely associated with win/win negotiating is the concept of shared decision making.

There are times when contract talks stall because multiple options are not discussed, or even considered. Often, people get locked into their positions without considering the interests behind the positions. Candoli, Hack, Ray, and Stoller discuss the importance of shared decision making as being important to good relationships between management and staff.²⁰ Multiple judgments are often very valuable in providing helpful alternatives when contract talks become difficult.

People do not always measure their level of satisfaction in terms of the amount of money they will acquire as a result of a contract settlement. Nor do they measure their level of satisfaction exclusively based on concessions regarding working conditions. People experience satisfaction when they know that they have been dealt with in an honest manner and treated with respect. The opportunity to voice one's opinion, to be heard, and to be treated in a collegial manner is very important. All of these issues and

²⁰I. Candoli, W. Hack, J. Ray, and D. Stollar, School Business Administration: A Planning Approach (New York: The Falmer Press, 1984).

concept needs are ideas which need to be recognized, understood, and, if the need arises, practiced by attorneys representing school boards. This points to the fact that the role of school board attorneys has changed and really expanded over the years. As we can see, the expansion, and changes in the role are correlated with changes which have occurred in history.

During an interview, Marvin Glink spoke about current trends in the field of school law. The interesting and perhaps most valuable portion of his discussion regarding this topic is that one can easily understand the extent to which the role of attorneys representing school boards has expanded over the years.

Mr. Glink expressed the view that schools involved with tort liability cases constitute a major portion of his practice. His firm is involved in handling groups of school districts and representing them in cases involving tort liability, accident, and health claims. They also work on interpreting rules dealing with dual insurance (which spouse's insurance company is liable, for example). Mr. Glink continued the discussion with some issues regarding defense of schools in the area of liability.

We do a lot of defense of schools. We've been successful at getting legislation through the legislature that has been helpful in limiting liability, and that occurred in 1988 or 1989. That has been a help, but there are still law suits that are filed, and still the need for defense in the school areas that has to be asserted on behalf of the school district. As a matter of fact, we've had many negligence, liability cases, mostly in the physical education area when you haven't properly supervised the kids,

or when you haven't provided the right equipment. Those always come up from time to time.²¹

This is a good example of attorneys representing school boards who have taken a very positive leadership role on behalf of the school districts they represent. Mr. Ancel and Mr. Glink's firm was able to help in the area of working for legislation that has been helpful in limiting liability and the expense to school districts which always accompanies liability cases. We can see that the role of school board attorneys has continued to expand and change.

Today there are very specific areas of expertise in which attorneys representing school boards need to be proficient. In fact, the role of school board attorneys has changed over the years, and, as we have seen, there is a relationship between the changes that have occurred in the role and changes that have occurred in our society. School law has evolved into a full-time area of specialization within the field of law.

The role of attorneys representing school boards has expanded, and it has been demonstrated that many people feel that during the time attorneys representing school districts are actively functioning as school attorneys, they should do more than practice law on behalf of their clients.

²¹Marvin Glink, interview by author, 10 December 1992, Chicago, Illinois, tape recording.

For example, as we have seen, there are those who believe that attorneys representing school boards must be active in organizations which further the interests of administrators and school boards with respect to the efficient operation of school systems. Attorneys should be affiliated with the state board of education, should be available to provide inservice to the board of education and staff, and should also, in addition to everything else, be able to represent the school district effectively at state and national conferences. This is very different from the situation which existed when local municipal lawyers, for example, would be called by the local school district on rare occasions, for legal advice years ago.

The expansion and increase in the power of teachers unions is also related to the manner in which the role of attorneys representing school boards has changed over time. Of course, school district attorneys must be proficient in the area of contract negotiations, but a more subtle change in education has occurred. This change has certainly been related to the changes in the role of school attorneys as well. That change is the trend toward shared decision making and collegial bargaining. Attorneys representing school boards need to be aware of and well versed on these particular kinds of processes because collegial bargaining can be very useful in working toward the establishment or preservation of a healthy, positive school climate.

It is important to approach contract negotiations from the perspective of a problem solving mentality. All of these issues support the notion that the role of attorneys representing school boards has changed and that the changes have been related to changes in our society.

Today, people in our society generally seem to be more aware of liability issues than ever before. We have seen that in recent years one particular law firm which employs school board attorneys has become extensively involved in tort liability. This particular firm has been instrumental in the development of self insured pools in Illinois. It spends a great deal of time defending schools. It is fascinating to reflect on the fact that this particular law firm was instrumental in pushing through legislation which has been helpful in limiting liability. The interesting aspect of this involvement is that this is exactly what has been stressed as being an important aspect of the function of school board attorneys. Getting involved with issues, to the degree that the interests and goals of school boards and administrators, with respect to the competent and efficient operation of schools, is vital. This is an outstanding example of that type of activity.

Current trends in school law reflect the extent to which the role of attorneys representing school districts has evolved over time. These attorneys must be proficient in all of the areas mentioned previously. However, attorneys representing school districts have in some cases experienced changes

in their role which encompass not only legal issues but social and political issues as well. Collegiality and a shared decision making mentality are important. Also, working to further the interests of school boards and administrators is important as well. We have seen that those interests must, of course, be aligned with the objective of always working toward or maintaining the efficient operation of schools.

Finally, people do not always measure their level of satisfaction by reaching monetary goals. They do often feel satisfied if they know they have been dealt with in an honest manner and if they have been treated with respect. Today, administrators working with teachers need to consider these concepts. Attorneys representing school boards will serve their clients best when they keep these considerations in mind as well.

Chapter VI is a summary which covers the manner in which the study was done. Conclusions and recommendations for further study are included as well.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The evolution of the role of the board of education was examined in this study from the perspective of the careers of Mr. Anthony Scariano, Mr. Allen Franke, and Mr. Louis Ancel. These three people were chosen because they were pioneers in the field of school law. As part of this study, material written by the three attorneys was utilized whenever possible. Personal interviews were conducted with Mr. Scariano and Mr. Franke. The late Louis Ancel's long-time partner, Mr. Marvin Glink, participated in interviews which were very useful in the chapter on Mr. Ancel.

A review of the literature was conducted. Historical references were included to elicit a feeling of what life was like during periods of time in which the three pioneers experienced changes in the role of attorneys representing school boards. Material was presented in the format of mini-biographies. For example, each chapter on each individual pioneer included biographical information in an effort to bring out an understanding of that person's earlier years.

The evolution of the role of school board attorneys was described from the perspective of the pioneer attorneys who actually lived through and experienced the times. Scariano, Franke, and Ancel all began their careers as attorneys working primarily in areas other than school law because, when they began their careers, school law was not a full-time area of specialization. As events occurred, they all witnessed the expansion of the role of school board attorneys to its current status as a full-time area of specialization.

Conclusions

According to the perceptions of the three pioneers in the field of school law on which this study has focused, there have been several factors that have been related to the changes in the role of attorneys representing school boards.

1. All of these people stated that school law as an area of specialization as it currently exists is a relatively new phenomenon. In the early days, attorneys representing school boards were not needed very often. School law was just a part-time activity when compared to their full time law practices.

School attorneys were used by school districts prior to 1960 to work on bond issues, building repair and new building situations, and contracts which were developed between school

districts and suppliers of materials. As Mr. Scariano said, school law was a "drop in the bucket" in the early years.

Allen Franke spoke about the manner in which students and parents related to teachers and school officials in the early years of school law. There were very few challenges from students and parents in those days, and that was perceived as a dramatic difference in terms of the way things are now, and the way they were then. Also there were very few challenges in the employee field. Mr. Franke also talked about the fact that in the early years there was no collective bargaining and there was immunity from court damages and from court action. All of these factors made a very different kind of climate from the one that exists today.

It is interesting to think about the way that some people become involved and interested in their particular fields of endeavor. Allen Franke became interested in working with school districts as a result of his association with Harold Norman who became interested in school law as a result of his experience as a school board member. Lou Ancel was always an advocate of home rule and local control both in the areas of municipal law and school law. He felt strongly about the concept that the

manner in which the state funds education needs to be changed. Mr. Scariano, while a member of the state legislature, was appointed to serve on the Education Committee of the House and his interest in school law developed rapidly.

2. In terms of events that were associated with the expansion of the role of attorneys representing school boards, the perceptions of our attorneys are strikingly similar. First of all, the decade of the sixties and the events that occurred during that decade were important factors to consider according to their perceptions. Issues such as sex discrimination, freedom of expression, employment discrimination, and, therefore, the need to become familiar with and to gain expertise in constitutional law were all important factors.

Labor issues became more important in the sixties. Teachers seemed to become more demanding, better organized and more militant. Also teachers as a group became keenly aware of the fact that political activism and political contributions were important in terms of assisting them in getting what they wanted. The manner in which teachers began to view themselves and their profession in conjunction with the notion of being in a union changed as well. They began to feel comfortable with the

idea that they were union members. As their comfort level increased, so did the amount of work for school board attorneys.

During the sixties it seemed as though many people emulated the entire freedom movement, and the agitation and unrest which proliferated in every segment of our society was also present in the schools. Segregation issues, and dress, and grooming issues were important as well. This all contributed to an expansion in the role of attorneys representing school boards according to the perceptions expressed by attorneys. The role was changing as Allen Franke said because "the times were changing." Parents, and even students, challenged what they viewed as autocratic authority, and so attorneys were needed more and more. As Marvin Glink said, the sixties were very turbulent. There was a general atmosphere for agitation. The war in Viet Nam "agitated a lot of people," and contributed greatly to that environment. In the sixties not only the times but also the role of school board attorneys were changing.

3. Religion was another area that the attorneys perceived to be an issue that led to the expansion of the role of attorneys representing school boards. The separation of church and state has been an important concept in our society since our country

was founded. In terms of the relationship between the role of school board attorneys and religion, one of the ways that a relationship occurred was in the area of transporting parochial school special education students to public schools. For example: Where would the services be provided? How would parochial school students identified as handicapped, and therefore eligible for services, access these services? Transporting parochial school students became a problem in which attorneys representing school boards became involved.

Recently, in addition to the transportation problem, the concept of prayers at graduation ceremonies and, before that, displaying religious symbols during holiday seasons contributed to the expansion of the role of attorneys representing school boards as well according to the attorneys perceptions.

4. Another area that everyone agreed on as one that was, and still is, important is the area of special education. Today, there are school board attorneys who specialize specifically in this area and spend all of their time working on problems and issues that relate to special education.

The numerous complicated rules and regulations, paper work, and the rights due to students and parents certainly have

contributed to the expansion of the role of attorneys representing school boards.

5. All of the attorneys spoke about the 1970s, and the faltering economy and how that particular situation was related to the expansion of the role of school board attorneys. The bad economy led to school closings reduction in force, and generally was related to the creation of more work for attorneys representing school boards.
6. As might be expected, there were also issues and areas that each individual perceived as important that the other attorneys failed to mention. For example, while all of the attorneys felt that teachers' unions were important in terms of the relationship between the expansion of the role of attorneys representing school boards and what was occurring in society, one of them felt that the proliferation of teachers' unions and, specifically, the changes that took place within the IEA were of utmost importance.
7. The increase in litigation in our society was another area which was perceived as important by one of the attorneys. As our society in general has become more litigious, the perception is

that the role of attorneys representing school boards has expanded.

8. An additional area perceived as important was the changes that have taken place as a result of the actions of the Illinois legislature and the United States Congress. The increase in mandates has actually resulted in school boards being told how to run their schools and school districts.
9. One of the attorneys spoke about the importance of the post World War II baby boom. He felt that an expansion in the role of attorneys representing school boards occurred in conjunction with the population explosion. More schools were needed and had to be built. Also, with growth came more money which had to be handled. As more money became involved in the operation of school districts, more legal advice was needed in order to insure that funds were being properly managed.
10. Another event which one of the attorneys felt was important was the Tenure Act. This act changed things a great deal in as much as teachers could no longer be dismissed easily.
11. A very interesting concept brought up by one of the attorneys was his perception of the change in the role of attorneys representing school districts as related to the situation which now

exists in the composition of the boards of many school districts. Today, in his opinion, many people have become school board members in order to attempt to force their own particular agendas onto everyone else. He felt that today there exists a particularly selfish attitude on the part of many school board members. Also there is no longer much mutual respect and loyalty.

12. Liability cases have also increased according to one of the attorneys, and the perception is that this situation is also related to the manner in which the role of school board attorneys has grown over the years. Today school board attorneys are charged with the responsibility of assisting school districts in their struggle to avoid litigation and to stay out of the clutches of the state.

School law is no longer a sideline. Today it is a full-time area of specialization.

Recommendations for Further Study

It has been stated that during the decade of the sixties, this country came of age. Perhaps it can also be said that during the decade of the sixties, the field of school law as an area of specialization began to come of age, as well.

As the decade of the sixties came to an end, Richard M. Nixon defeated Hubert H. Humphrey, the Democratic candidate for President. Throughout his campaign, Nixon stressed the concept that he was in favor of a return to 'law and order'. The Nixon administration also promised to shift the responsibility for providing programs and aid from the federal to the state levels of government. One of the main tenets of the Nixon years was that revenue sharing was the best way to promote economic and social growth.¹

Revenue sharing was based on a philosophy that local government units, being closer to the people, could assess their needs better than the more remote and more bureaucratic federal government . . . The reaffirmation of the role of local government . . . revealed a growing distrust of big government.²

It seems as though the attempts to win the battle against social injustice which had permeated the decade of the sixties were slowly beginning to wane in popularity. One of the main concerns of people living in this country during the early 1970s was the state of the American economy. The problems that faced Americans in the area of the economy, at that time were staggering. Inflation was on the rise, and to many people it seemed to be out of control. The federal deficit was growing at an alarming rate. Also, many Americans found themselves gripped by recessions that threatened to destroy the

¹Gerald L. Gutek, Education in the United States: An Historical Perspective. (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), 317.

²ibid., 318.

American dream of economic prosperity. All of these factors had an impact on education. As a result they would also be related to the continuing changes that were experienced by people working in the field of school law.

One of the biggest, most dramatic changes that took place in our country during the early seventies was a change in mood.

No longer absorbed with issues of social and political change, students now sought career paths leading to economic security and status . . . A more pessimistic and uncertain mood characterized the national climate of opinion. Hard fiscal realities were having an impact on educational institutions ranging from elementary and secondary schools to universities.³

One of the greatest impacts on school systems during this period was that school districts everywhere were experiencing declining enrollment. It is recommended that this issue be studied in the future in conjunction with the manner in which the role of attorneys representing school boards evolved. It is further recommended that retired school superintendents be contacted so their perceptions regarding the evolution of the role of school board attorneys may be considered.

As a result of the problems presented by a faltering economy, many people suffered. Teachers were no exception. It is important to keep in mind the fact that one of the more negative aspects of declining enrollment was that

³ibid., 319.

school districts received less revenue as a result. This set the stage for a very difficult confrontation in the field of education.

The nation's spiraling inflation rate was severely impacting schools. Operations costs for textbooks, supplies, heating and lighting, and maintenance, were steadily rising. Equally serious were teachers demands for increased salary and medical benefits. Teachers' unions grew more militant as their members suffered from the economic pressures of an inflationary tide that was reducing their real income and purchasing power.⁴

Teachers became more militant in their demands and so did the unions to which they belonged.

Throughout the 1970s Americans had to struggle through some very difficult economic times. Rising inflation and the staggering federal deficit were problems that affected life in the United States, and, specifically, the field of public education. Periodic recessions were all too common during the seventies. In addition to all of the problems being faced by people as a result of the state of the economy, people working in the field of public education had to contend with another difficult problem, declining enrollment. All of these factors: the bad economic situation, the recessions, and declining enrollment were related to the changes that took place in the role of attorneys representing school boards.

⁴Gerald L. Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1968), 320.

One of the most maddening difficulties that developed during the 1970s with regard to the problems experienced as a result of the faltering economy was that inflation was increasing very rapidly. This rapid increase in the rate of inflation meant that school districts had to expend more money than ever on heating, lighting, maintenance, supplies and materials. To make matters worse, teachers, just like everyone else, were being hurt in an economic sense. As a result, they needed and felt they deserved salary increases that would be of help to them to survive in the difficult economic times of the seventies. This led to a situation that was ripe for strained relations and strained negotiations between school boards and teachers. It is recommended that further research be conducted that deals with the manner in which economic conditions change and the effect that a changing economic climate might have on the role of school board attorneys.

The role of attorneys representing school boards has changed over the years. The expectations of people who serve on school boards and the needs of school administrators have changed as well with regard to what attorneys need to provide for them as they serve in their respective capacities. Our society has evolved and changed too.

The mid 1940s, and the early fifties were a simpler time. However, many of the issues that people face today were 'simmering' below the surface of America's collective sense of perception at that time and these issues would

soon 'boil over' and would preoccupy Americans for years to come. Some of these issues would undergo a kind of metamorphosis and would eventually be presented to the public in the form of legislation. Other issues would burst upon the scene as great events that would shape our future. At times some of these issues evolved into situations that led to the production of important case law.

As we have seen, sometimes one human action can make a tremendous difference in the lives of future generations. For example, one needs only to remember the courage expressed by a woman who refused to give up her seat on a bus on behalf of a cruel system that had to be changed. All of these issues eventually led to changes in society and, the role of attorneys representing school boards changed as well. According to the attorneys interviewed, the changes and evolution that occurred in that particular role were related to changes that occurred in society.

In the final analysis, educators and attorneys worked together to confront problems that, at times, seemed insurmountable. And the stage was set for the development of a new generation of people who would grow and would confront problems. Some of the problems they will encounter will certainly be new. Some of them will be as old as time itself. But, in any case, this new generation will have a great advantage. They will be able to

approach all of the problems and all of the challenges they inherit from the fresh perspective that only the young can bring to life.

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APPROVAL SHEET

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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Education.

November 22, 1993
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