

BOOK REVIEW

BUILDING A BETTER TEACHER: UNDERSTANDING VALUE-ADDED MODELS IN THE LAW OF TEACHER EVALUATIONS*

By Mark A. Paige, 2016, Lanham, MD: Rowman & Littlefield

REVIEWED BY TODD A. DEMITCHELL AND CARLA M. EVANS, M.Div. (ABD)**

Teachers occupy the central position in schools: providing instruction, structuring the learning activities, and assessing the work of students. Supporting this proposition, Jennifer King Rice notes, "Teacher quality matters. In fact, it is the most important school-related factor influencing student achievement."¹ Consequently, whom schools attract, retain, and dismiss is critical to the quality of the educational program delivered by the school. Harvard Graduate School of Education professor, Susan Moore Johnson, echoing Professor Rice succinctly writes, "Who teaches matters."² While teachers have always stood at the crossroads of education this is an unprecedented time in that policymakers are seeking to hold teachers individually accountable in very public ways for the achievement of their students.³

Value-added models (VAMs) are the common name for several different statistical iterations that seek to link, or establish causality, between student test scores and teacher effectiveness. Stephen Sawchuk, commenting on the rise of VAMs observes, "The debate about 'value added' measures of teaching is the most divisive topic in teacher-quality policy today."⁴ Scholars

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1. JENNIFER KING RICE, TEACHER QUALITY: UNDERSTANDING THE EFFECTIVENESS OF TEACHER ATTRIBUTES v (Aug. 2003) available at [http://](http://www.epi.org/publication/books_teacher_quality_execsum_intro/)

www.epi.org/publication/books_teacher_quality_execsum_intro/.

2. SUSAN MOORE JOHNSON, *TEACHERS AT WORK: ACHIEVING SUCCESS IN OUR SCHOOLS* xiii (1990).

3. Clarin Collins & Audrey Amrein-Beardsley, *Putting Growth and Value-Added Models On the Map: A National Overview*, 116 *TCHRS. COLLEGE REC.* 1 (2014).

4. Stephen Sawchuk, *Wanted: Ways to Measure Most Teachers*, *EDUC. WEEK* (Feb. 2), 1, 15 (2011) at 1 (also writing, "It has generated sharp-tongued exchanges in public forums, in news stories, and on editorial pages. And it has produced enough policy briefs to fell whole forests.") *id.*

on both sides of the issue line up to support the use of VAMs⁵ and to criticize the use of VAMs.⁶

Noted Stanford educational policy professor, Linda Darling-Hammond, describes the goal of increased student outcomes through using student test scores to evaluate teachers. She writes, "Using VAMs for individual teacher evaluation is based on the belief that measured achievement gains for a specific teacher's students reflect that teacher's effectiveness."⁷ If teacher effects on student learning can be isolated through VAMs, then important personnel decisions can be based on the findings. Retention and compensation are two important personnel decisions that could be based, at least in part, on VAM estimates of teacher effectiveness. Professors Ballou and Springer underscore concerns of applying VAMs in high-stakes personnel decisions, noting that VAM estimates "are notoriously imprecise."⁸ They raise a cautionary flag writing, "If value-added scores are to be used for high-stakes personnel decisions, appropriate account must be taken of the magnitude of the likely error in these estimates. Otherwise decisions based on them will be unfair to teachers."⁹

Professor Mark A. Paige's book, *Building a Better Teacher: Understanding Value-Added Models in the Law of Teacher Evaluations*, also raises a cautionary flag. While acknowledging that VAMs can be "an alluring elixir," he asserts they have "fatal shortcomings."¹⁰ He explores these shortcomings by focusing on the intersection of VAMs and the legal response to VAMs via

5. According to proponents, VAM estimates of teacher effectiveness hold the most promise for differentiating between effective and ineffective teachers because they focus on student achievement outcomes. See Tim R., Anastasia Semykina, & Douglas D. Harris, *Value-Added Models and the Measurement of Teacher Productivity*, 38 *ECONOMICS OF EDUC. REV.* 38 (2014). See also *Vergara v. State of California*, No. BC484642, 2014 WL 2598719 (Cal. Super. Ct. L.A. Cty. Aug. 27, 2014), in which Judge Rolf M. Treu accepted the findings of a VAM study as support for holding that California tenure statutes violated the California Constitutional rights of students. For a discussion of this case, see Todd A. DeMitchell & Joseph J. Onosko, *Vergara v. State of California: The End of Teacher Tenure or a Flawed Ruling*, 25 *S. CAL. INTERDISC. L.J.* 589 (2016).

limitations of VAM, the Statement concludes, "The value of high-quality, research-based evidence cannot be overemphasized.") *id.* at 4. Available at <http://edr.sagepub.com/content/early/2015/11/10/0013189X15618385.full.pdf+html>. See also, "Even after a decade of seeing the damage done by the No Child Left Behind Act, policymakers are still fetishizing student scores on standardized tests, using them as a crutch instead of turning to balanced, sensible solutions to teacher evaluation." Kevin G. Welner, *High-Quality Teacher Evaluations of "Fetishization" of Tests? New Report Offers Clear Guidance for Policymakers*, NATIONAL EDUC. POL'Y. CNTR. (News release) 1 (Dec. 7, 2010).
6. The research community has asserted valid reasons to issue a caution about the use of VAM in educator evaluation systems. See, e.g., American Education Research Association, AERA Council, *AERA Statement on Use of Value-Added Models (VAM) for the Evaluation of Educators and Educator Preparation Programs*, XX *EDUC. RES.* 1, 1 (June 2015) available at <http://edr.sagepub.com/content/early/2015/11/10/0013189X15618385.full.pdf+html> (referring to the
7. Linda Darling-Hammond et al., *Evaluating Teacher Evaluation*, 93 *PHI DELTA KAPPAN* Mar. 2012, at 8.
8. Dale Ballou & Matthew G. Springer, *Using Student Test Scores to Measure Teacher Performance: Some Problems in the Design and Implementation of Evaluation Systems*, 44 *EDUC. RES.* 77, 78 (2015).
9. *Id.*
10. MARK A. PAIGE, *BUILDING A BETTER TEACHER: UNDERSTANDING VALUE-ADDED MODELS IN THE LAW OF TEACHER EVALUATIONS* x (2016).

lawsuits.¹¹ We agree with the author that his book “contributes to a needed conversation about the law, teacher evaluation, and VAMs.”¹² He explains how litigation should be part of an overall strategy to challenge the use of VAMs in high-stakes teacher evaluation decisions, but he also explores how legal challenges alone are insufficient to effectuate change. At the same time, Professor Paige does not advocate for either the abandonment of the use of VAMs¹³ or returning to a system of essentially evaluation as ceremonial congratulations, devoid of critical content and preserving the status quo.¹⁴

The Organization of the Book

Building a Better Teacher is based on two conceptual frameworks. First, noting and embracing the contribution of Deborah Stone to policy analysis, he accepts her proposition “that rational policymaking is an illusion.”¹⁵ Finely articulated policy prescriptions can lead to absurd results and unintended consequences. Second, Professor Paige applies a comparative institutional analysis to the application of VAMs in teacher evaluation.¹⁶ He compares the ability of the courts to change VAM-related policies to a political and legislative approach.

The book is organized into eight chapters. The first grouping, Chapter 1 (VAMs: What are they Good For?) and Chapter 2 (Full Circle: Teacher Evaluation, VAMS, and Employment Decisions), defines VAMs as an umbrella term for a variety of statistical models that aim to estimate teachers’ contributions to student learning outcomes by linking student test scores to individual teachers. Professor Paige discusses the application of VAMs to teacher evaluation and resulting high-stakes personnel decisions. The second grouping of chapters examines the legal questions raised by the implementation of VAMs in personnel decisions. It consists of two chapters: Chapter 3 (VAMs Under the Law: Unfair but Rational?) and Chapter 4 (Pre-Existing Conditions: Legal Deference to School Administrators’ Judgment of Teacher Performance). The third section reviews VAMs using a collective bargaining lens. Chapter 5 (VAMs, Collective Bargaining, and Arbitration: More Legal Headaches for Administrators) focuses on the potential role of arbitration in collective bargaining agreements as opposed to litigation as a better vehicle for challenging VAM based employment decisions.¹⁷ Chapter 6 (Collective Bargaining: A Tool to Mitigate VAM Damage to School Culture) also reviews VAMs within the context of collective bargaining, but focuses more sharply on the impact VAMs have on school culture and how a particular

11. Professor Paige argued earlier that applying a legal lens to the use of VAMs has been a mistake. Mark A. Paige, *A Legal Argument Against the Use of VAMs in Teacher Evaluation*, TEACHERS COLLEGE RECORD 1 (Dec. 21, 2014) ID Number: 17796 available at <http://www.tcrecord.org> (writing, “It is not too late to un-ring this bell using VAMs in high-stakes decision. In an era of accountability, it may be hard, but the consequences to individual teachers and districts of enacting a flawed policy are too great.”) *id.* at 3.

12. Paige, *supra* note 10 at xi.

13. *Id.* at xiii.

14. *Id.* at xii. Professor Paige writes, “To be clear: this book is not advocating a return to a system of non-judgment, where teachers summarily receive positive ratings and the status quo is preserved.” *Id.*

15. *Id.* at xvii.

16. *Id.*

17. *Id.* at 69 writing, “Arbitration may be more favorable to employees, as opposed to courts.”

method of bargaining can help to mitigate the negative impact of VAMs.¹⁸ Chapter 7 (The Role of the Courts in Improving Teacher Quality Through Evaluation) analyzes the potential of the courts to provide a long-term solution to the use of VAMs in high-stakes teacher evaluation policy. The book ends with Chapter 8 (Lessons Learned: What Policymakers Can Learn From Education Professionals) where Professor Paige argues that policymakers adopt the practice of master teachers and develop a reflective response rather than reflexive attention to the newest “bright and shiny object” in education policy, which promises quick fixes to complex problems.¹⁹ We will discuss the chapters in more detail below.

What are VAMs?: Chapters 1 & 2

Chapter 1 opens with a brief scenario of second grade teacher, Kim Cook, a Florida Teacher of the Year recipient, who received an unsatisfactory evaluation based on VAM, thus jeopardizing her job. Names and stories are used to humanize the concerns that the book addresses throughout this and other chapters. As a backdrop to the scenario, Paige poses a central question foreshadowed in the title of the book. He asks, “What assurances do we have that VAMs contribute to improving teacher quality?”²⁰

Professor Paige provides a concise overview of VAMs²¹ written for a broad audience rather than measurement, evaluation, or assessment experts. He succinctly identifies the main technical and nontechnical issues regarding VAMs that arise from the research literature.²² Excessive statistical jargon is avoided in order to appeal to readers who are more interested in the policy and legal perspectives than the intricate nuances of measurement and statistical modeling. However, he does identify the critical technical issues of validity, bias, lack of randomization, the influence of non-school factors, and reliability of VAM estimates. His discussion on these topics is straightforward, facilitating the reader in arriving at the conclusions he draws for each issue.

He also points to two important nontechnical concerns that shape the discussion about the appropriate use of VAMs. He questions whether VAMs

18. Our organization is slightly different than the author's. He aligns Chapters, 3, 4, & 5 as an examination of legal questions. *Id.* at xvi-xvii. While the alignment is sound, for purposes of our review we found that a slight alteration supports our analysis.

19. *Id.* at 107. Professor Paige's comment about the periodic emergence of “bright shiny objects” influencing policy is reminiscent of Anthony Downs's seminal work, the issue-attention cycle in public policy making. For example, Downs writes, “Each [issue] will rise into public view, capture center stage for awhile, and then gradually fade away as it is replaced by more fashionable issues moving into their “crisis” phases.” Anthony Downs, *Up and Down With Ecology—the “Issue-Attention Cycle”*, 28 THE PUBLIC INTEREST 38, 43 (1972) available at http://www.nationalaffairs.com/doclib/20080527_197202804upanddownwithecologytheissueattentioncycleanthonydowns.pdf

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20. *Id.* at 1.

21. For example, he writes, “VAMs purportedly estimate the contribution of a teacher to a student's achievement.” *Id.* at 2.

22. However, he writes in the first paragraph of the chapter about the Rothstein falsification test, but incorrectly asserts that Rothstein's assessment was, “some value-added models (VAMs) rate teachers based on the past year's achievement of students” *id.* at 1. Rothstein's contribution was that he showed how the assumptions underlying common VAMs are incorrect by showing how VAM-based estimates show large “effects” of fifth grade teachers on fourth grade students, which is impossible.

can improve teacher quality because "they do not provide particularly important information about what types of practice contributed to [the VAM] rating."²³ The second issue he raises is that VAMs contribute to an emphasis on testing. This emphasis results in a devaluing of non-tested grades and subjects and "continue[s] this winnowing and, in the process, limit[s] the goals of public education."²⁴

Chapter 2, the shortest chapter, continues the discussion begun in Chapter 1 and adds the scope, application, and use of VAMs in a policy context. While the discussion is thoughtful and accurate, it could just as easily have been wrapped into the first chapter to provide a cohesive review of VAMs in policy and practice.

VAMs and the Law: Chapters 3 & 4

These two chapters are the core of the book. They explore how the courts have responded to lawsuits based on the implementation of VAMs. These chapters are well-written, reflecting Professor Paige's experience as a school law attorney as well as a professor. He captures the cases he chose to discuss with efficiency, easily leading the reader who does not have legal training through the case-by-case analysis. The cases selected well represent legal issues and arguments associated with VAMs.

He begins Chapter 3 with a review of the essential legal concepts: the tests for Equal Protection and the distinction between procedural due process and substantive due process. He also explains how the courts will tolerate unfair, unreasonable, and "absurd"²⁵ applications of this policy, for as long as they are rational, they are constitutional. This knowledge is necessary for understanding the issues associated with the court cases. The chapter starts with pre-VAM cases and moves to the specific cases related to the use of VAMs in high-stakes personnel decisions. This organization works well in that the application of student test scores to educator competence is placed within an historical context. *Cook v. Stewart* is given greater attention,²⁶ but this is warranted because it was the first major case regarding VAMs and it has precedential and persuasive authority value because a Court of Appeals decided the case.

Chapter 4 provides the legal context of judicial deference given by the courts to school administrators over educational matters. This discussion is important in that it helps the reader to understand some of the assumptions that judges bring to cases such as *Cook v. Stewart*. This chapter, like the previous chapter, is well written and complete without walking the reader into the high, tangled weeds of legal analysis. The placement of the chapter following the discussion of the pre-VAM and VAM cases is an example of author's organizational decisions. However, the discussion on administrative hearings in Florida may align well with the VAM section in Chapter 3. Either way, the reader gets the necessary information.

Collective Bargaining and VAMs: Chapters 5 & 6

23. *Id.* at 8.

24. *Id.* at 9.

25. "The court cautioned that the narrow focus on test scores could lead to absurd results." *Id.* at 54.

26. *Id.* at 33-36.

BUILDING A BETTER TEACHER

These two chapters move from case analysis to labor relations, specifically how collective bargaining impacts VAM initiatives. They are well placed and provide breadth and depth to the analysis of lawsuits because legal action and collective bargaining are two types of legal mechanisms available to protect teachers from adverse employment decisions. This discussion also provides a link between policy on VAMs and its application in schools and school districts as a term and condition of employment.

Chapter 5 provides an excellent and concise review of the legal structure of collective bargaining and how it differs from court litigation. It moves the reader to the core issue of grievances and arbitration where local disputes over the implementation and application of VAMs are likely to occur. A number of examples of arbitration are provided. They add context and texture to the discussion.

Chapter 6 seeks to establish a broader connection between VAMs and collective bargaining. Professor Paige, in this chapter, first discusses attributes of school culture. Next, he explores how VAMs negatively impact school culture, especially professional learning communities (PLC). He argues that VAMs provide a disincentive for teacher collaboration because of the ranking system's "zero-sum" game where teachers "are encouraged to covet their best instructional ideas" rather than share them.²⁷ Furthermore, this shift from collaboration to individualization promotes isolation and disconnection from the organization; each teacher looks out only for herself or for himself. The solution he proposes is two-pronged. The first proposed solution is the use of interest-based bargaining to negotiate peer-assisted review. Next, he believes that the shared governance of peer-assistance review may "counteract some of the collateral damage of high-stakes accountability regiments and VAMs."²⁸

The Courts and Building a Better Teacher: Chapter 7

This is a stand alone chapter. It builds on the earlier chapters, but focuses on applying the comparative institutional analysis lens. He provides an excellent and concise discussion of the limits of a court-based approach to changing the policy and practice of using VAMs in spite of their clear limitations discussed earlier. Essentially because of the limited reach of the courts, Professor Paige advocates for political action through the legislative branch to change VAM-related policies. And yet, the courts can support political processes by calling attention to the issue, fostering compromise, and delaying full policy implementation.

Lessons Learned for Policymakers: Chapter 8

Following the lead of Chapter 7, Professor Page reflects on the lessons learned that can inform legislative action. He offers six reflections. Three of the reflections are the most germane to his book: numbers 1 and 5 address the central challenge of litigation as vehicle for addressing the consequences of VAM, while number 6 speaks to the poorly placed reliance on VAM as the North Star for accountability. The other three reflections expand the scope of the issue but do not necessarily specifically address it. He writes:

27. *Id.* at 82.

28. *Id.* at 85.

1. There are significant costs in using the law to advance questionable practices.
2. Business models do not always transfer to public education policy.
3. The federal government is too involved in education, and this burdens local education agencies.
4. Local education and interest groups need to seize the policy initiative.
5. Education advocacy at the court level must be exercised judiciously.
6. There is no magic solution.²⁹

Professor Paige's concluding reflection states that simple solutions to complex problems—how best to “build” a better teacher using student test scores—may well be a chimera, a vain hope providing a false promise. Complex problems require complex solutions that are not one-size fits all, but nuanced and contextualized.³⁰ Moreover, to “build a better teacher” may be an intentionally ironic title using a 19th century metaphor of manufacturing because teachers are not widgets on a production line.³¹ To improve teacher quality requires more than the application of statistical models that do not and cannot by design provide any formative information a teacher can use to improve his or her teaching. Just categorizing a teacher as effective or ineffective, especially through VAM-type evaluation models, does nothing to promote professional growth. VAM may signal a problem, but it cannot identify the problem nor can it point to a preferred solution. In other words, VAM does not possess building tools.³²

Conclusion

Mark Paige's *Building a Better Teacher* is an excellent resource for practitioners, policymakers, and scholars who seek to understand how legal mechanisms like the courts and collective bargaining impact the application of VAM in policy and practice. It is well written, logically constructed, and complete without being overwhelming. The law is reviewed, but a law degree is not necessary to understand the discussion. Chapters 1-7 provide a very useful Key Points section summarizing each chapter. The book is well resourced (326 footnotes) for those readers who wish to delve deeper into VAMs, teacher evaluation, and the law. One of the strengths of the book is its exploration of the limits of the courts in effectuating a just and fair response to policies using VAM in high stakes, adverse personnel decisions.³³ He notes that litigation does play an important part in the debate. A lawsuit, or the threat of a lawsuit, may result in an effort to resolve the issue through political dialogue or possible bargaining and it calls attention to an issue.³³ It

29. *Id.* at 108-12.

30. *Id.* at 112.

31. Possibly inserting a question mark; to read *Building a Better Teacher?* may have captured the irony.

32. See, e.g., ERIC A. HANUSCHEK & STEVEN G. RIVKIN, USING VALUE-ADDED MEASURES OF TEACHER QUALITY 4 (May 2010) (Washington, D.C.: National Center for Analysis of Longitudinal Data in Education Research, Calder The Urban Institute (writing, “The

bigger issues worth value-added estimates of teacher effectiveness concern their use in personnel compensation, employment, promotion, or assignment decisions. . . . Despite the strength of research findings, concerns about accuracy, fairness, and potential adverse effects of incentives based on limited outcomes raise worries about using value-added estimates in education staffing and policy.”).

33. Paige, *supra* note 10 at 98.

can also foster compromise and delay implementation allowing for political dialogue, bargaining, and compromise.³⁴

The book's four conclusions logically flow from the analysis and are worthy of reflection.

1. First, from an evidentiary perspective, VAMs do not strengthen a school district's legal case in contested adverse employment decisions.³⁵

2. Second, because of the statistical flaws of VAMs they actually can frustrate school districts' efforts to effectuate a performance-based termination.³⁶

3. Third, VAMs negatively impact school culture, but school administrators may have some tools to mitigate this negative impact.³⁷

4. Fourth, stakeholders seeking to minimize the use of VAMs in evaluation and high-stakes decisions should focus their primary efforts in the political realm, rather than on litigation.³⁸

Building a Better Teacher broadens the discussion about the use of VAMs in teacher evaluations. It defines VAMs for a lay audience and adds the important dimension of how courts are responding to assertions of constitutional rights violations. It accurately discusses how courts often defer to the expertise of educators on these matters and how the courts are predisposed to uphold school board decisions unless there are clear violations of constitutional magnitude or a failure to follow state law. His analysis of how the courts are responding to legal challenges of VAMs is a worthy read. While VAM type policies continue to be mandated in various states and have survived some judicial scrutiny, Professor Paige appropriately raises a cautionary flag on the use of VAMs in high-stakes personnel decisions. He questions the utility of pursuing the mitigation of VAM based employment decisions through litigation.³⁹ This is a volume that deserves a place on scholars', practitioners', and policy makers' bookshelf. It raises important issues that can inform the important discussions about what processes and data best support high stakes employment decisions.

34. *Id.* at 99.

35. *Id.* at xi.

36. *Id.* at xi-xii (emphasis in original).

37. *Id.* at xii.

38. *Id.*

39. *Id.* at 108 writing, "There may be some day where the statistical issues around VAMs are largely resolved and expensive legal battles justified. Today, that is not the case."