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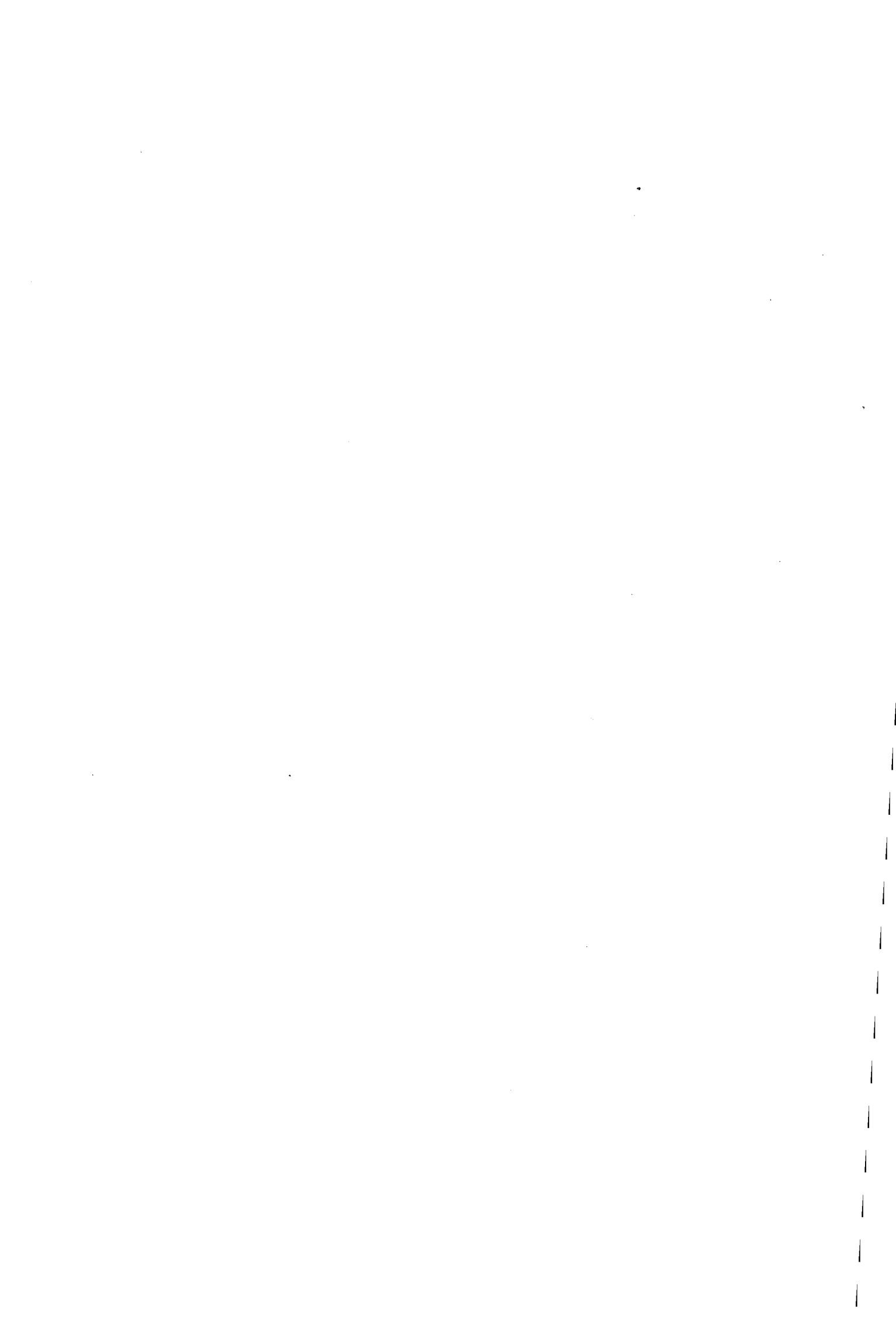
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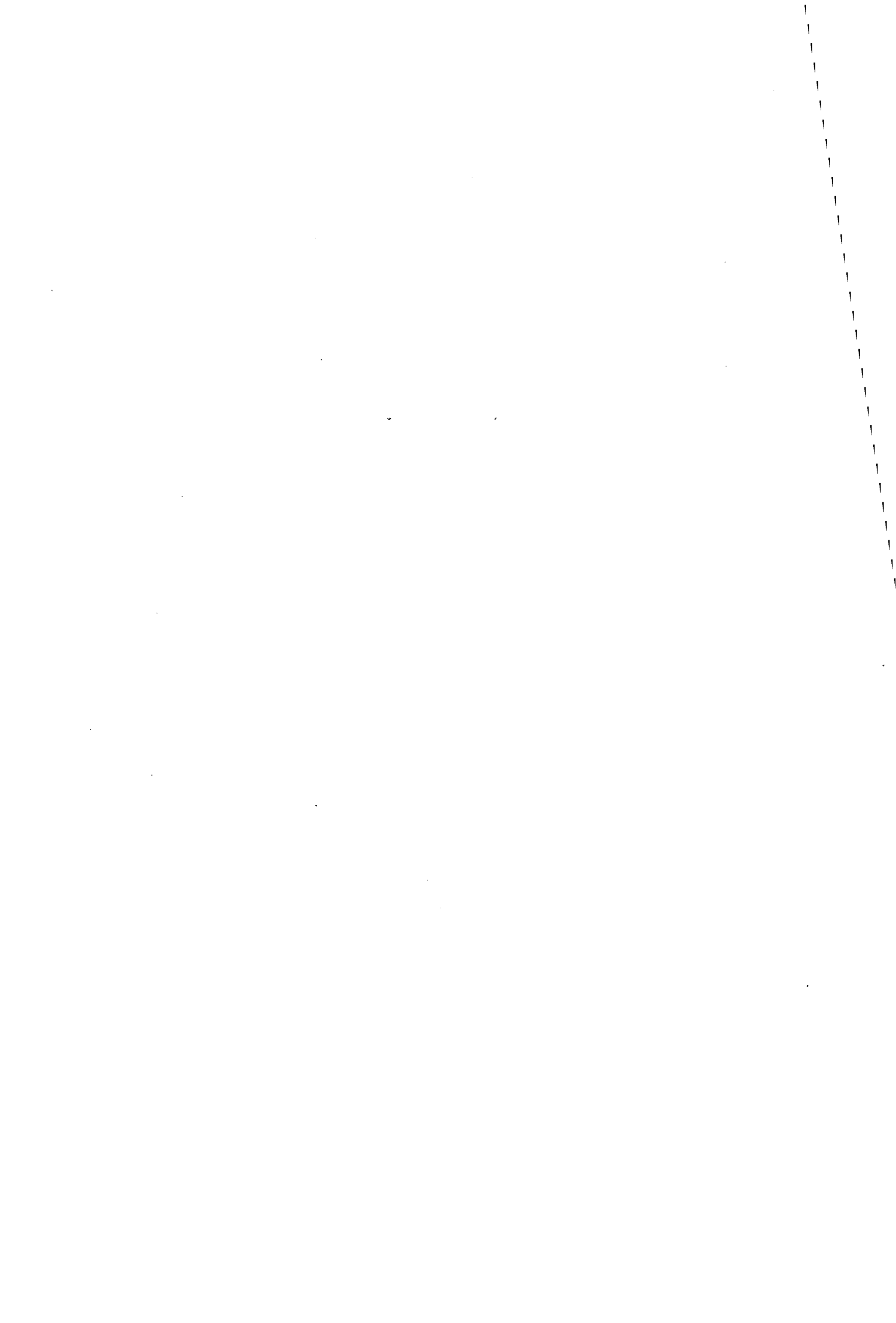
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**A judicial definition of immorality as cause for teacher dismissal:  
A comparison of two eras**

Harris, Fred Eugene, Ed.D.

The University of North Carolina at Greensboro, 1989

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A JUDICIAL DEFINITION OF IMMORALITY  
AS CAUSE FOR TEACHER DISMISSAL:  
A COMPARISON OF TWO ERAS


by

Fred E. Harris

A Dissertation Submitted to  
the Faculty of the Graduate School at  
The University of North Carolina at Greensboro  
in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Education

Greensboro  
1989

Approved by

  
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APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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**HARRIS, FRED EUGENE, Ed. D. A Judicial Definition of Immorality as Cause for Teacher Dismissal: A Comparison of Two Eras. (1988) Directed by Dr. Joseph E. Bryson. 172 pp.**

This study involved an investigation of immorality as a cause for teacher dismissal based on a comparison of court cases which were decided between 1966-1971 and 1981-1986. No differentiation was made between tenured and nontenured teachers. Both federal and state court opinions were examined. Based on these opinions, a definition of immorality was made.

Based on the investigation, the researcher found the following:

1. Teachers can be dismissed for immorality, provided their constitutional rights are protected.
2. Legal definitions of immorality are broad and ambiguous. Community values are considered in determining if an act is immoral, and alleged immoral behavior is linked to fitness to teach.
3. Statutes of all fifty states provide for removal of teachers for doubtful moral character.
4. The judiciary has in recent years given greater protection to the rights of teachers than to the discretion of school boards.
5. The use of obscene words and materials in the classroom is not per se, ground for dismissal for immorality.
6. Unwed parenthood cannot be equated with immorality.
7. Unfitness to teach is based on the relationship of the act to a teacher's classroom function.

8. Courts do not condone sexually intimate acts that abuse a pupil/teacher relationship.
9. Immoral acts outside the classroom tend to be judged by job-related criteria.
10. Using or advocating the use of marijuana constitutes immoral conduct.
11. Homosexuality, in and of itself, does not constitute immorality. If a teacher flaunts his lifestyle and if his acts attract publicity, the teacher's lifestyle and behavior may not be protected.
12. Teachers may be dismissed for immorality when their behavior attracts notoriety, constitutes a crime, or adversely affects the pupil/teacher relationship.
13. Teachers may not be dismissed for immorality for an isolated harmless act, a private act, or a non-offensive act.

The study revealed that a judicial definition of immorality is such acts, practices, or conduct that would render a teacher unfit to teach in a particular community or area; the acts, practices, or conduct may be such that offends the morals of a community and are a bad example to the youth whose ideals a teacher is supposed to foster and elevate.



## ACKNOWLEDGEMENTS

The writer wishes to express sincere appreciation to the members of his dissertation committee. Dr. H. C. Hudgins, Jr., provided encouragement, counsel, and guidance throughout the preparation of this dissertation. Dr. Joseph E. Bryson, Dr. Keith C. Wright, and especially Dr. Harold E. Snyder, provided invaluable advice and support during the dissertation process.

The writer also wishes to express his gratitude to the students and staff of Blue Ridge School and the Jackson County administrative team for tolerating his absences while pursuing this endeavor.

A special appreciation is also expressed to my wife Janice for her support and patience during the preparation of this dissertation. Also, the writer owes a debt of gratitude to his parents and daughters for their continued encouragement and support in completing this project.

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CHAPTER I  
INTRODUCTION

"Today's morals," wrote the California Supreme Court, "may be tomorrow's ancient and absurd customs."<sup>1</sup> Morals certainly vary according to place and time, yet few parents would willingly have their children taught by teachers they consider immoral. And if parents expect teachers to serve as adult models for their children, should a school board have the right to dismiss a teacher who violates the community's moral standards? Moreover, if a teacher holds a special position of trust and responsibility, can parents and administrators expect a higher standard of personal conduct from teachers than the law required of the average citizen?

These are some of the issues teachers have had to deal with for many years. They lie on the frontier of public controversy, involving teachers who have violated community norms regarding such practices as sexual activity, use of drugs, excessive consumption of alcohol, use of obscene language, and other so called immoral acts. The conflicts arise out of a clash of rights: Teachers assert that their private lives are their own business, whereas school boards argue that teachers are models for their students and must meet the moral standards set by the community.<sup>2</sup>

Standards of morality differ from community to community and change from year to year. For this reason, caution must be used in attempting to specify what conduct currently represents "immorality," especially immorality of sufficient magnitude to justify the dismissal of a teacher.

The late 1960's and early 1970's marked a time of unrest in America. This time period was the height of activism that was reflected in the nation's schools. These were changing times, often met with militant attitudes. Teachers were often dismissed for not conforming to a particular mold or for failure to present evidence of good moral character.

Changing public opinion and attitudes toward teachers developed during the 1970's which had an impact on the extent to which teachers were disciplined. Some of these changes represent significant decreases in the restrictions on teacher's conduct. The main factors that contributed to these changes were: (1) legislation and the widespread adoption of collective bargaining in education; (2) court decisions on teacher rights, especially constitutional rights; and (3) developments in the total social context.<sup>3</sup>

All states have statutory provisions regarding teacher dismissals, and few cite exactly the same causes. The reasons specified for dismissal vary from very specific to very general, with considerable ambiguity and overlap among the causes. The most frequently cited causes for teacher

dismissal are immorality, incompetence, and insubordination.<sup>4</sup>

School boards in 38 states are statutorily authorized to dismiss a teacher on a direct charge of immorality and/or moral turpitude. No other single charge is mentioned as often in dismissal statutes. In the remaining 12 states statutory grounds of good or just cause, unfitness to teach, or unprofessional conduct may be reasons to dismiss a teacher for immoral conduct. While legislatures have chosen to cite immorality as a cause for dismissal, they have been reluctant to define the term or to discuss its application to specific conduct. Consequently, the definition of immorality and its application to specific conduct have been left to the judicial system. As a 1952 Pennsylvania decision pointed out: "Exact definitions of such abstract terms (as immorality) are obviously quite impossible."<sup>5</sup> Because of the imprecise nature of the term, school boards, when contemplating dismissal of personnel on such charges, need to be aware of what courts have said about conduct considered to be immoral.

The difficulty for both boards of education and teachers is that the notion of what constitutes immorality has changed over the last several decades and the term has been attacked as being unconstitutionally vague. Furthermore, behavior considered immoral in one community might be acceptable in another. Recent court challenges

have focused on teachers whose living arrangements are at variance with the values of the school community, who use drugs, or who are involved in criminal activity. When these actions are brought to the attention of school officials and board members, teachers often have been charged with immorality.<sup>6</sup> Immorality is what courts define it as being and that definition is changing. Therefore, the purpose of this study is to develop a judicial definition of immorality as cause for teacher dismissal. A comparison of two eras, 1966-1971 and 1981-1986, will be conducted.

A survey of relevant cases revealed that actions that form the basis for dismissals based on immorality generally fall into one or more of the following discrete categories of conduct:<sup>7</sup>

1. Heterosexual misconduct with students
2. Heterosexual misconduct with nonstudents
3. Homosexuality
4. Nonsexual misconduct with students
5. Physical abuse of students
6. Classroom discussion or use of materials that have sexual content
7. Use of profanity
8. Misconduct involving drugs
9. Misconduct involving alcohol
10. Other criminal misconduct
11. Misappropriation of funds

12. Cheating

13. Lying

A school teacher's influence on children is a matter of great importance to society as a whole and a source of special concern to parents and school administrators. A teacher's influence on his or her pupils goes beyond the subject matter of the lesson. A teacher cannot teach without conveying some of his or her attitudes on society, politics, and ethics. Because of this sensitive role, a teacher has always been subject to very close scrutiny regarding his or her fitness to teach. Traditionally, this scrutiny has included an examination of the teacher's private life as well as his or her classroom competency.<sup>8</sup> In Adler v. Board of Education the Supreme Court stated: "That school authorities have the right and duty to screen officials, teachers and employees as to their fitness to maintain the integrity of the schools as part of an ordered society cannot be doubted."<sup>9</sup>

The moral code for teachers is more rigid than for people in many other vocations. This seems largely because parents look upon teachers as models for imitation by children, and because many parents hope their children will live on a higher moral plane than parents do.<sup>10</sup>

Balanced with this concern for the teacher's moral fitness is a growing awareness both of any individual's right to privacy and society's constantly changing attitudes



about what in fact, constitutes "immorality". A court no longer will accept the notion that "immorality", in and of itself, is a sufficient cause for dismissing a teacher; to constitute sufficient ground, the "immorality" must also affect the teacher's classroom performance. This requirement may be either directly stated or merely implied.<sup>11</sup>

In the past, teachers who violated their community's moral standards either resigned or were quickly dismissed. Few educators doubted that teachers could be fired for adultery, drunkenness, homosexual conduct, illegal drug use, committing a felony, or becoming pregnant while single, but community consensus about what constitutes immoral conduct has broken down in recent years.<sup>12</sup> Many educators believe that their personal behavior away from school is their own business. Yet many administrators argue that educators teach by example, and thus should be adult models for their students and should conform to the moral standards of the community.

State laws define the authority of school boards in terminating the employment of school personnel. Generally, these laws specify the causes for which a teacher may be terminated and the procedures that must be followed. The right of a school board to determine the fitness of teachers has been well established; in fact, courts have declared that school boards have a duty as well as a right to make

such determinations. The United States Supreme Court has recognized that such authority is vested in school boards.

According to the Court:

A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted.<sup>13</sup>

### SIGNIFICANCE

Teachers are charged with and dismissed for immoral conduct all across the country. Without a good definition of immorality, a problem exists for administrators and school boards in determining just what will hold up in court. Considerable time and money are spent each year in attempting to prove immorality. Teacher and community morale is often affected by charges of immorality. This study should provide direction for administrators, boards of education, and teachers in knowing what they can or cannot do when considering charges of immorality.

By looking at two time periods, the researcher would like to give some indication of what courts have said about immorality as cause for dismissal of teachers and the amount of litigation on the subject during these time periods. During the late 1960's and 1970's, the answers to such questions as, "What is proper"? "What is legal"? and "What

is socially acceptable"? changed dramatically. The value of conformity declined. The value of individuality rose. "Alternative life styles" gained acceptance. People's hair styles, clothing, places of residence, and leisure-time activities became recognized as extensions of their personalities.

### METHODOLOGY

The first stage of the research involved a search of the Educational Administration Abstracts and Dissertation Abstracts and then an examination of copies of dissertations whose titles appeared to be related to the topic under investigation to determine the need for research on the topic. The second step was to locate educational and legal journal articles dealing with teacher dismissal due to immorality. This was accomplished through the Education Index and the Index To Legal Periodicals. The Thesaurus of Eric Descriptors was used to cross-match terms related to the dismissal of teachers for immorality, and these terms were used to run a computer search of related literature from the Education Resources Information Center (ERIC). Books on school law and reports of the National Education Association were located through card catalogs and libraries at the University of North Carolina at Greensboro, University of Tennessee Law Library, and Western Carolina University. For purposes of convenience, the Law Library of Buncombe County was used for specific cases.

The American Digest System, especially the Decennial Digests and the Descriptive Word Index were the major sources of citations related to the study. A search of headings, "School and School Districts--Teachers," 141 (4) "Grounds For Removal or Suspensions," provided leads to the majority of cases. Other key numbers and headings were used to locate marginal cases: 648 Judgment; 132 Schools; 90 Constitutional Law; and 141 (5) was used to locate cases dealing with conduct, weapons, shoplifting, and conduct unbecoming a teacher. Appropriate relevant volumes of West's Education Law Reporter were then examined for comments by recognized authorities.

Other citations were obtained from the following legal encyclopedias and dictionaries: Corpus Juris Secundum, American Jurisprudence, Words and Phrases. All cited cases were then read in the respective National Reporters and, if treated, in the American Law Reports.

#### DELIMITATIONS

This was a study and analysis of court cases involving immorality as a cause for teacher dismissal which were litigated between 1966-1971 and 1981-1986. This time restriction would preclude the treatment of any cases filed but not actually decided during these two half-decades. Seventeen states do not list immorality as a reason for dismissal.<sup>14</sup> Therefore, no court opinions from those states were included in this study unless immorality was subsummed

under another reason, such as "just cause". Court of record opinions only were researched which precluded the treatment of state trial court opinions and of conflicts resolved prior to reaching trial.

This study dealt with immorality as an issue in public schools only. Post-secondary school cases were used only where directly relevant to public schools as well as to post-secondary education.

Due process was not directly studied as an issue. The central issue involved "reason" for dismissal, not "process".

State, federal constitutional provisions, and statutory law were not directly studied, but were examined as they related to the subject. State and federal constitutions were included in this study when provisions were directly at issue with dismissal for immorality.

The researcher was not concerned with the "rightness" or "wrongness" or court opinions, but with the rationale of opinions and decisions reached as they provided data for the meaning of immorality.

This study dealt only with the dismissal of classroom teachers due to immorality. Administrators and other personnel were not considered. Tenured or probationary status was not considered an issue, consequently both categories of teachers were included in the study when immorality was at issue in their termination.

### DEFINITION OF TERMS

For the purpose of this study, the following terms are identified and defined:

**Action.** An ordinary proceeding in a court by which one party prosecuted another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense. In common language, a "suit", or "lawsuit".<sup>15</sup>

**Appeal.** An application to a higher court to rectify the decision of a lower court.<sup>16</sup>

**Certiorari.** An action to remove a case from an inferior to a superior court. It is most commonly used when the United States Supreme Court is requested to hear a case from a lower court.<sup>17</sup>

**Common Law.** As used in this text, legal principles derived from usage and custom, or from court decisions affirming such usages and customs, or the acts of Parliament in force at the time of the American Revolution, as distinguished from law created by enactment of American legislatures.<sup>18</sup>

**Concurring opinion.** An opinion written by a judge who agrees with the majority of the court as to the decision in a case, but has different reasons for arriving at that decision.<sup>19</sup>

**Dismiss.** To send away; to discharge; to cause to be removed temporarily or permanently; to release from duty.<sup>20</sup>

**Dissenting opinion.** The opinion in which a judge announces

his-hers dissent from the conclusions held by the majority of the court.<sup>21</sup>

Due Process. The exercise of the powers of government in such a way as to protect individual rights.<sup>22</sup>

Enjoin. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act.<sup>23</sup>

Immoral. Contrary to good morals; inconsistent with the rules and principles of morality; inimical to public welfare according to the standards of a given community, as expressed in law or otherwise.<sup>24</sup>

Immorality. (1)Immorality is not necessarily confined to matters sexual in their nature; it may be that which is contra bonos mores; or not moral, inconsistent with rectitude, purity, or good morals; contrary to conscience or moral law; wicked, vicious; licentious, as an immoral man or deed. Its synonyms are: corrupt, indecent, depraved, dissolute; and itsonyms are: decent, upright, good, right. That may be immoral which is not decent.<sup>25</sup>

Immorality. (2)Immorality is . . . "not immoral conduct considered in the abstract . . . (it) must be considered as conduct which is hostile to the welfare of the general public; more specifically in this case, conduct which is hostile to the welfare of the school community."<sup>26</sup>

In loco parentis. In place of the parent; charged with some of the parent's rights, duties, and responsibilities.<sup>27</sup>

Liability. Legal responsibility.<sup>28</sup>

Mandamus. A writ to compel a public body or its officers to perform a duty.<sup>29</sup>

Moral. Dealing with, or capable of distinguishing between, right and wrong; of teaching, or in accordance with the principles of right and wrong; good in conduct or character; specifically, sexually virtuous.<sup>30</sup>

Moral turpitude. . . . anything done contrary to justice, honesty, modesty, or good morals.<sup>31</sup>

Plaintiff. Person who brings an action; he who sues by filing a complaint.<sup>32</sup>

Public schools. Schools that are maintained at public expense.

Statute. Act of the legislature.<sup>33</sup>

Teacher. One who teaches, specifically as a profession.<sup>34</sup>

#### ORGANIZATION OF STUDY

The remainder of the study is divided into four major chapters. Relevant literature and research are reviewed in Chapter II. That chapter includes a historical perspective of teacher dismissal and also contains a review of changes in expectation demanded of teachers. Chapter III includes a report of case law on teacher immorality covering the years of 1966 to 1971, while Chapter IV includes the same information for the years of 1981 to 1986. The findings of the study, the conclusions, and recommendations are included in Chapter V.



## NOTES

<sup>1</sup> Morrison v. Board of Education, 461 P.2d 375 (Cal. 1969).

<sup>2</sup> Louis Fischer and David Schimmel, The Rights of Students and Teachers: Resolving Conflicts in the School Community (New York: Harper & Row, Publishers, 1982), 113.

<sup>3</sup> Floyd G. Delon, Substantive Legal Aspects of Teacher Discipline (Topeka, Kansas: National Organization on Legal Problems of Education, 1972), 52.

<sup>4</sup> W. Lance Landauer, John H. Spangler, and Benjamin F. Van Horn, Jr., Legal Issues in Public School Employment, eds. Joseph Beckham and Perry A. Zirkel (Bloomington, Indiana: Phi Delta Kappa, 1983), 154.

<sup>5</sup> Albert Appeal, 92 A.2d 663, 664 (Pa. 1952).

<sup>6</sup> Nicholas Melrick and Linda Twyman, "Teacher as Exemplar," The Clearing House Vol. 59, No. 7 (March 1986), 301.

<sup>7</sup> Landauer, Spangler, and Van Horn, supra, at 155.

<sup>8</sup> John G. McCormick, "Immorality As a Basis for Dismissing a Teacher," School Law Bulletin Vol. XVI, No.3 (Summer 1985), 9.

<sup>9</sup> Adler v. Board of Educ., 342 U.S. 485 (1952).

<sup>10</sup> Harold H. Punke, The Teacher and the Courts (Danville, Illinois: The Interstate Printers & Publishers, Inc., 1971), 584.

11 McCormick, supra, at 9.

12 Louis Fischer, David Schimmel, and Cynthia Kelly, Teachers and the Law 2nd ed. (New York: Longman, 1987), 220.

13 Adler, supra note 9 at 493.

14 Floyd G. Delon, Legal Controls On Teacher Conduct: Teacher Discipline (Topeka, Kansas: National Organization on Legal Problems of Education, 1977), 12.

15 Madaline K. Remmlein and Martha L. Ware, School Law Fourth Ed. (Danville, Illinois: The Interstate Printers & Publishers, Inc., 1979), 543.

16 Id.

17 Id. at 544.

18 Id. at 545.

19 Id.

20 Henry Campbell Black, Black's Law Dictionary, Rev. 5th Ed. (St. Paul, Minn.: West Publishing Co., 1979)

21 Remmlein and Ware, supra, at 546.

22 Id.

23 Id.

24 Black, supra.

25 Words and Phrases, Vol. 20 (St. Paul, Minn.: West Publishing Co., 1959).

26 Jarvella v. Willoughby - Eastlake City School District Board of Education, 233 N.E. 2d 143 (Ohio 1967).

27 Remmlein and Ware, supra, at 547.

- 28 Id. at 548.
- 29 Id.
- 30 Webster's New World Dictionary, Rev. (New York: Warner Books, 1984).
- 31 Words and Phrases, Vol. 27A, (1961).
- 32 Remmlein and Ware, supra, at 548.
- 33 Id. at 549.
- 34 Webster's New World Dictionary, supra.

## CHAPTER II

### REVIEW OF RELATED LITERATURE

The purpose of this chapter is to examine the literature related to teacher dismissals due to immoral issues. An attempt is made (1) to review and assess the thinking of scholars in the fields of philosophy, education, and law as revealed in the literature; (2) to assess movement in the field of education in view of teacher dismissal problems and court decisions related to dismissals on the ground of immorality; (3) to build a conceptual base for succeeding chapters. The literature is treated in four broad categories: (1) teacher's personal conduct; (2) the concept, nature, and definition of the term "immorality"; (3) the influence of the courts on school boards, school policies, and immorality; and (4) immorality and court decisions.

#### TEACHER'S PERSONAL CONDUCT

In medieval England, people believed that the laws of nature, the "natural law," would provide the solution to man's problems. In deciding many cases, the courts sought to discover what the laws of nature were. Emerging from these decisions were principles which became known as the "common law." The common law of England formed the basis for the original law of the United States, and today, many

of the laws which govern the operations of the public schools and teachers exist because of the common law. The common law is based on court decisions, not on legislative enactments.<sup>1</sup>

The other major source of law is the Constitution of the United States. This is the "supreme law of the land." All laws passed by Congress or state legislatures, ordinances passed by cities or other local governmental bodies, and rules and regulations set up by boards of education are subject to and must be in harmony with the provisions of the Constitution. The Constitution sets forth much of the basic law which governs state and federal agencies, but it does not specifically refer to education. Therefore, education is primarily a matter for the individual states, and most laws affecting an individual and that person's school system can be found in the statutes passed by state legislatures. On the other hand, the Constitution specifically protects certain individual rights guaranteed to every citizen. As a result, no laws, ordinances or rules or regulations may restrict one from exercising these personal rights which are granted by the Constitution.<sup>2</sup>

Since the early history of this country, the public has been far more restrictive in its expectation for the conduct of teachers than for the conduct of those in most other professions. This situation existed as far back in history

as colonial times when education and religion were almost inseparable. According to Elsbree, the public was especially critical of teachers during the first half of the nineteenth century when it evoked the most rigid moral and religious standards. In 1841, an annual report of the board of education in Boston expressed the necessity for teachers to set examples for pupils in "deportment, dress, conversation and all personal habits."<sup>3</sup>

In his exhaustive study, A History of Freedom of Teaching in American Schools, Beale cited incidents recorded during the mid-nineteenth century in which teachers were reprimanded, dismissed, fined, imprisoned, and subjected to mob harassment for real or imagined violation of prevailing public standards. The offensive conduct included teaching black children and advocating abolition of slavery.<sup>4</sup>

In the middle of the nineteenth century, it was common practice for teachers to live with the families of children who attended their schools. They would spend approximately a week in the home of each family in lieu of higher cash wages. "The extent of boarding around was large. In 1862 the number of teachers in Vermont who were subjected to this mode of life was 3354, or 68 percent of all those employed. Connecticut reported a similar situation earlier. The proportion of teachers in 1846 constituted 84 percent of those reporting, thus the policy appears to have been a common one before the Civil War."<sup>5</sup> Although many claims

have been made for the benefits as well as the shortcomings of "boarding round," the arrangement undoubtedly encouraged the general attitude that teachers have no private lives at all.

With or without boarding around, a teacher's life has always been similar to that of a goldfish in a bowl. Like ministers--but unlike lawyers, physicians, businessmen, or plumbers--teachers were closely regulated by public rules and expectations.

"The explanation for this lies in the nature of the business in which they are engaged. Entrusted with the responsibility of instructing the young, they stand in loco parentis before the law and the public and are expected to keep themselves above reproach and to be subservient to the wishes of the most pious patrons in the community."<sup>6</sup> Thus, the teacher was seen as an adult model, a role he is expected to fulfill to some extent even today. Another reason for regulating the lives of teachers has to do with the constant face-to-face relationships that were integral to the folk culture of rural America. Urban centers provide anonymity, which tends to separate one's work from his home and make it more possible for a teacher to conduct his private life according to the dictates of his conscience.

Since the Civil War period a wide variety of restrictions have surrounded the lives of teachers. These restrictions often paralleled the folkways and mores of the

times but were more strictly applied to teachers. In fact, teachers risked dismissal for engaging in some activities (even away from school) that were acceptable for others. A brief catalog of common restrictions follows.<sup>7</sup>

**Drinking.** Although in colonial times teachers drank alcoholic beverages very openly, the later temperance movement brought severe and lasting restriction. Drunkenness almost certainly cost a teacher his job, and applicants for positions usually faced the questions, "Do you drink?" and "Do you smoke?" Contracts forbade drinking and smoking, and even an occasional drink in a private home could lead to chastisement or dismissal. As in most other restrictions small towns were more severe than cities, and the Northeast was less restrictive than other parts of the country.

**Smoking.** The use of tobacco, particularly by women, was frowned upon. In many places this was a specifically forbidden practice whose violation led to dismissal. There are schools today that will not hire women who smoke, and many states still require teachers to teach the "evil effects of smoking and alcohol."

**Theater.** It comes as a surprise to many that theater attendance was a forbidden form of amusement in many communities. In fact, such restrictions lasted until about 1920.

**Dancing.** Dancing and card playing were frowned upon



even more than attending the theater. In connection with any socially marginal or questionable behavior, a much higher degree of abstinence was required of teachers than of their pupils' parents.

**Divorce.** Divorce would generally lead to dismissal and a change of profession. "After all, divorce is immoral, and you don't want an immoral teacher influencing your children." Gambling and swearing were similarly treated.

**Marriage.** Oddly enough, marriage could also lead to dismissal, particularly with respect to women teachers. Until the 1920s and 1930s, contracts tended to prohibit marriage, but later these were eliminated as being unreasonable and against public policy.

**Sexual immorality.** Sexual immorality was almost always disastrous. Whether it consisted of adultery or fornication, or even rumors of such conduct, dismissal would follow.

**Late hours.** Going out on school night or staying out until late at night was forbidden. In fact, "keeping company" was against the rules in many communities, while some contracts specified that a woman teacher might "keep company" with only one man and that he might not be another teacher.

**Gossip.** Rumor or gossip, however unfounded, tended to be sufficient for dismissal, particularly if it were related to sexual immorality. Since a teacher was expected to be a

model adult, she could be dismissed if her reputation for good character were tainted.

**Publicity.** If the behavior of a teacher brought any unfavorable publicity to the school, his career was in jeopardy. Any unconventional behavior or nonconformity was treated as sufficient evidence of immaturity, inability, or immorality.

**Grooming.** The personal appearance of teachers was closely controlled. Cosmetics, gay colors, bobbed hair, sheer stockings, short skirts, low-cut dresses, and the like, were forbidden.

**Racism.** White teachers, particularly in small communities, were dismissed if they were seen in public with blacks or visited their homes. In the South white school boards would ignore sexual behavior on the part of black teachers that would lead to the dismissal of white teachers.

**Organizations.** Membership in organizations was a very sensitive matter with many local variations. For example, in some communities a teacher had to join the Ku Klux Klan to keep his job. In others, membership in the KKK led to immediate dismissal. There were many controversial and therefore "unsafe" organizations, including the American Civil Liberties Union. Teachers were not to take part in open, public criticism of issues, leaders, or organizations. The widely accepted exercise of free speech, press, or assembly was denied them. Any type of activity

related to labor organizations was discouraged, and membership in teachers' unions would typically lead to dismissal.

**Duties.** At the same time, a variety of formal and informal obligations were imposed on a teacher's private life. For example, if he was invited to a social function, he could not decline. His contract often obligated him to Sunday School teaching, Scout work, or 4-H Club leadership. Amazingly enough, teachers tended to submit to these restrictions, meekly accepting them and helping to enforce them against their fellow teachers.

Since the Civil War period a wide variety of restrictions have surrounded the lives of teachers. These restrictions often paralleled the folkways and mores of the times and were strictly applied to teacher. In fact, teachers risked dismissal for engaging in some activities (even away from school) that were perfectly acceptable for others.

Teaching as an occupation is struggling even today to shake off a burdensome legacy of nineteenth-century restrictions.

In 1883 Josiah Royce wrote that a teacher "may find of a sudden that his non-attendance at church or the fact that he drinks beer with his lunch, or rides a bicycle is considered of more moment than his power to instruct"<sup>8</sup> Even before he got into difficulties over teaching evolutionary

theory, John Scopes was criticized in Dayton for cigarette smoking and dancing.<sup>9</sup>

At one time under a contract used in a North Carolina town, teachers promised "not to go out with any young men except insofar as it may be necessary to stimulate Sunday School work"; "not to fall in love ..."; "to remain in the dormitory or on the school grounds when not actively engaged in school or church work elsewhere"; and "to sleep at least eight hours each night. . . ." <sup>10</sup> In another contract signed in 1915, teachers promised, among other things, "not to keep company with men; to be home between the hours of 8:00 P.M. and 6:00 A. M. unless in attendance at a school function"; "not to loiter downtown in ice cream stores"; not to leave town at any time without permission of the chairman of the board, and not to get in a carriage or automobile with any man except her father or brother. <sup>11</sup>

The following excerpts from a teacher's contract illustrate conditions that were not uncommon in the 1920s.

I promise to take a vital interest in all phases of Sunday-school work, donating of my time, service, and money without stint for the uplift and benefit of the community.

I promise to abstain from all dancing, immodest dressing, and any other conduct unbecoming a teacher and a lady.

I promise not to go out with any young men except in so far as it may be necessary to stimulate Sunday-school work.

I promise not to fall in love, to become engaged or secretly married.

I promise not to encourage or tolerate the least familiarity on the part of any of my boy pupils.

I promise to sleep at least eight hours a

night, to eat carefully, and to take every precaution to keep in the best of health and spirits, in order that I may be better able to render efficient service to my pupils.

I promise to remember that I owe a duty to the townspeople who are paying me my wages, that I owe respect to the school board and the superintendent that hired me, and that I shall consider myself at all times the willing servant of the school board and the townspeople.<sup>12</sup>

Elsbree hypothesized that the beginnings of a more liberal attitude toward teacher conduct accompanied a relaxation of moral standards by society in general during World War I.<sup>13</sup> However, from the results of a 1939 study, Anderson, finding little evidence of permissiveness with respect to teacher conduct, concluded that "in most states dismissal was on a personal rather than a professional basis."<sup>14</sup> Among the trends cited by the author were:

1. The courts' tendency to affirm dismissals of women for marriage.
2. The courts' invalidation of dismissals for "anticipated" causes.
3. The courts' consistent pattern of upholding dismissals for "immorality."
4. The school boards' "use of the charge of abandonment of positions" when the teacher was actually available and willing to continue service.
5. The school boards' frequent reliance on "abolition of position" as a basis for teacher dismissal in districts operating under tenure laws.

Similar restraints were imposed even after the First

World War. For example, a Virginia contract signed in 1935 specified that teachers could not keep company with "sorry young men." A Tennessee contract stipulated that "said teacher is to refrain from any and all questionable pastimes." An Alabama contract asked: "Do you promise that if employed, you will not have company or go automobile riding on Monday, Tuesday, Wednesday and Thursday nights?"<sup>15</sup> One young teacher echoed Royce's remark: "How I conduct my classes seems to be of no great interest to the school authorities, but what I do when school is not in session concerns them tremendously."<sup>16</sup>

By 1950, community pressures had gradually decreased. Calloway reported that 75 percent of Missouri teachers who responded to a survey indicated no pressure against dancing, smoking, or card playing. Yet 58 percent reported that social drinking was "frowned on" by the community or the administration, and 20 percent said that they found opposition to their participation in activities open to other citizens.<sup>17</sup> Story concluded from an analysis of the results of a survey of 950 classroom teachers that the evidence "seems to point to a growing change in public attitude toward teachers".<sup>18</sup>

Bolmeier observed in 1960 that teachers were "more restricted than most citizens in the exercise of their freedoms guaranteed by the Constitution."<sup>19</sup> This conclusion was based on a review of court decisions on teacher

involvement in subversive, political, union, and other controversial out-of-class activities.

On the other hand, Firth in advocating self-discipline by the teaching profession declared: "Existing legal machinery is apparently inadequate for the removal of incompetent or unethical teachers from our classrooms."<sup>20</sup> In this same vein, Garber expressed doubt that a teacher could be fired for "unprofessional conduct" because of his public criticism of the school system unless such criticism can be shown to impair or disrupt discipline or the teaching process.<sup>21</sup>

A number of articles on teacher immorality were published in the late 1960s. Punke wrote: "The moral code for teachers is more rigid than for people in many vocations."<sup>22</sup> From an analysis of court decisions, Koenig identified the various meanings ascribed to teacher "immorality" and "misconduct." He closed the discussion with the following recommendation:

For the teacher who would avoid dismissal on grounds of immorality or misconduct ... guidelines would include the avoidance of illicit sexual activity; the avoidance of actions which might cast doubt on either character or reputation; a thorough knowledge of the community in which service is being performed; and a readiness to forfeit a certain degree of personal independence and freedom of action . . . .<sup>23</sup>

According to Nolte, a board of education "may legally expect the teacher to exhibit exemplary behavior and comply with local mores in dress and conduct, especially in public."<sup>24</sup>

Williams analyzed the legal causes for dismissal of public school teachers for a 1967 doctoral dissertation.<sup>25</sup> He concluded that the states' statutory causes for dismissal lacked "unity" and that the courts' interpretation displayed "a great deal of ambiguity among causes."

In 1968, Stinnett observed that today's teachers "can do just about anything that any respectable citizen can do."<sup>26</sup> Nonetheless, a 1973 article declared: "Even today, teacher behavior unrelated to professional matters has been the focus of school boards' attention."<sup>27</sup> The author added that boards fire or change the status of many of these teachers on the ground that their behavior constituted "conduct unbecoming a teacher" or "unprofessional conduct." Walden maintained, however, that an employee's private conduct is not subject to the employer's scrutiny.<sup>28</sup>

Most of the articles of the 1970s appeared to be in agreement with McGhehey's observation:

The developments in the case law during the last 10 years or so suggest . . . that neither immoral behavior nor criminal convictions may provide the automatic basis for dismissal commonly assumed by school board members and school administrators. Instead, the courts appear to be fashioning a requirement that the public employer show a causal connection, a nexus, between illegal or immoral behavior and performance on the job.<sup>29</sup>

In 1975 Davis concluded that in dismissing a teacher, a school board is now required to relate a teacher's misbehavior to his job performance or to the effect that misbehavior has on the educational process or system.<sup>30</sup> Citing specific examples of teacher misconduct, Hudgins



warned school boards against dismissing teachers without establishing this necessary connection.<sup>31</sup> Similarly, in 1975 Ostrander observed that "teachers whose nonconventional behaviors are practiced with discretion . . . are likely to meet with the protection of the courts."<sup>32</sup>

The increase in public interest in this topic is reflected in articles appearing in other-than-educational journals. For example, a front page article in the Wall Street Journal carried the title, "More Teachers Fight Efforts to Fire Them for Personal Conduct"<sup>33</sup> and another article in Newsweek was headed "Private Lives."<sup>34</sup>

In 1977, Francis and Stacey stated: "In an era of changing mores, the judiciary has the unhappy task of defining immorality and deciding when it affects fitness to teach."<sup>35</sup> They concluded that the courts seemed to be moving toward job-related criteria by which to judge the impact of acts committed outside the school setting.

In 1978, Flygare analyzed a highly publicized case of a dismissed homosexual teacher.<sup>36</sup> Disagreeing with the court's disposal of this case, the author opined that the state supreme court should have sent the case back to the trial court again to fill in the gaps or it should have overturned the discharge as not supported by sufficient evidence.

The following year, Fleming concluded that "despite radically changing public attitudes and practices in a

variety of areas, the community and their appointed and elected officials continue to expect and demand that public school teachers observe historically approved standards of social decorum."<sup>37</sup> Although the most recent case cited in the article was decided five years earlier, the author also concluded that teachers are required to "maintain a strict separation between their public and private lives."

In 1980, Zirkel and Gluckman prepared a short article on teacher dismissal for immorality.<sup>38</sup> After presenting the facts of a recent Missouri case, the authors posed questions relating specifically to the decisions as well as dismissals for immorality generally and then presented answers based on this and other court decisions.

Finally, a book by Fischer, Schimmel, and Kelly contains a chapter titled, "How Free is My Personal Life?"<sup>39</sup> This chapter, according to the authors, examines "how the courts have resolved this conflict between teacher freedom and community control." Among other things, they concluded that most courts recognize that teachers should not be penalized for their private behavior unless it has clear impact on their effectiveness as teachers.

#### **THE CONCEPT, NATURE, AND DEFINITION OF THE TERM "IMMORALITY"**

North Carolina law provides that "immorality" is a valid and permissible ground for dismissing a career teacher.<sup>40</sup> Similar statutes may be found in nearly all states. However, most of these laws, including North

Carolina's, do not define the term. The research shows that traditionally "immorality" was what school boards said it was. School boards determined what teacher behavior constituted immorality, and generally courts supported a school board's right to make that determination. Such unlimited board discretion is not the case today. Teachers have increasingly challenged the discretionary power of school boards in the area of teacher dismissals in general and particularly in the area of dismissal for immoral causes. Likewise, the constitutionality of state statutes dealing with immorality as a dismissal cause is under attack. A particular point of contention related to dismissal for immorality concerns discipline of teachers for behavior in their private lives outside the classroom or school setting.<sup>41</sup>

Philosophers, the courts, legislatures, and, more recently, school boards and educators have grappled with the term "immorality" as a statutory cause for teacher dismissal. Immorality is a broad and nebulous term that means different things to different individuals and groups.<sup>42</sup> Philosophers and the courts have attempted to define or limit the term "immorality" by examining its root, or the converse of immorality, namely, "morality".

Gert asserted that morality is an "unusual word" seldom used alone without some qualification.<sup>43</sup> He hinted at part of the conflict surrounding interpretation of the term by

the courts and school boards through his assertion that there is no widespread belief that such a thing as morality per se exists.<sup>44</sup> He stated that,

. . . there is only this morality and that morality. It is commonly thought that there is no universal morality; no code of conduct that, in some sense, would be adopted by all men. <sup>45</sup> But although this belief is widespread it is false.

Gert maintained that no one has yet provided a satisfactory account of morality and that, "The main problem has been that no one has ever adequately distinguished morality from other things."<sup>46</sup> He further stated that "The problem is the result of the fact that no one realizes there is a problem."<sup>47</sup>

Frankena examined morality in a social and cultural context:

. . . morality starts as a set of culturally defined goals and of rules governing achievement of the goals, which are more or less external to the individual and imposed on him or inculcated as habits.<sup>48</sup>

He spoke to the nature of morality, thus: "Considered as a social system of regulation, morality is like law on the one hand and conversion or etiquette on the other."<sup>49</sup>

Frankena indicated that morality is the "moral institution" of life of which each individual becomes a part and in which different individuals becomes a part and in which different individuals or groups may have moralities or moral codes and "value systems" within the broader meaning of morality.<sup>50</sup> He stated,

Morality . . . is . . . a social enterprise, not just a discovery or invention of the individual for his own guidance. Like one's language, state or church, it exists before the individual who is inducted into it and becomes more or less of a participant in it, and it goes on existing after him . . . it is an instrument of society as a whole for the guidance of individuals and smaller groups. It makes demands on individuals that are . . . external to them.<sup>51</sup>

Like Gert, Frankena implied that there is a common morality that can be identified as an instrument of society and recognized by members of the society. However, the immense volume of litigation related to immorality cases raises a question as to whether a common morality exists and can be recognized by individual members of society. Accordingly, society, and particularly the judiciary, is becoming more liberal in its judgment of teacher behavior.<sup>52</sup>

Like the courts in past years, Giruetz spoke to the cultural relativity of morality and the basis of morality. In speaking of cultural mores as the standards of good and right, he quoted William Graham Sumner:

The mores can make everything right . . . for the people of a time and place their mores are always good . . . for them there can be no question of the goodness of their mores. The reason is because the standards of good and right are in their mores.<sup>53</sup>

Gert, Frankena, and Giruetz add credence to the idea of a societal morality rooted in the values and beliefs of social communities, a morality similar to law in one respect and convention in other respects. This conception of a common morality would appear to be the basis of legislative and

school board authority in dealing with the conduct of teachers.

In order to examine the legal conception of morality, it seems necessary to look at the construction of the word "morality" as well as its antonym, immorality. Morality in its simplest form may be considered as behavior which is in accord with the principles or standards of right conduct. State statutes attempt to address behavior not in accord with principles or standards of right conduct, or immorality. There is no provision in the language for a neutral stance on morality, no middle-ground term such as "unmoral." An act or person is either moral or immoral. The problem arises over who is to say who or what is immoral, especially when it comes to a judgment of teacher conduct.

Courts and philosophers have given some clues toward a common concept of morality and immorality. As philosophers have associated morality with the social and cultural sphere, so have the courts placed "immorality" in a social context. In speaking to the issue, Bolmeier stated that immorality is a term which is difficult to interpret as a legal cause.<sup>54</sup> He cited Jarvell v. Willoughby as a case in point, in which a court attempted to define immorality:

Whatever else the term "immorality" may mean to many, it is clear that when used in a statute it is inseparable from "conduct" . . . But it is not "immoral conduct" considered in the abstract. It must be considered in the context in which the legislature considered it, as conduct which is

hostile to the welfare of the general public.<sup>55</sup>

In the quoted passage from Jarvella v. Willoughby, supra, the court attempted to remove "immorality" from the realm of abstraction and apply it to the world of human conduct as related to human welfare. However, the large number of court cases involving immorality, especially sexual misconduct as immorality, demonstrates the concern of American society over possible deviation from cultural mores by its members, especially teachers. The volume of litigation also suggests extensive disagreement over what constitutes morality and who is to accept the restrictions of moral law and convention contained in the cultural mores, or common morality of the society.

The literature contains many discussions of immorality in relation to deviant sexual conduct on the part of teachers. But "immorality" extends far beyond sexual acts. And the courts have attempted to define "immorality" as behavior of many types. According to Bolmeier, when the courts have been perplexed in their attempt to interpret the statutory term "immorality," they have sought and supplied definitions to serve as guidelines. He quoted from an early Michigan case to support his point. In that decision the Supreme Court of Michigan not only related immorality to social mores but broadened its meaning beyond sexual matters:

"Immorality" is not necessarily confined to matters sexual in nature; it may be that which is

contra bonos mores; or not moral, inconsistent with rectitude, purity or good morals, contrary to conscience or moral law, wicked . . . .<sup>56</sup>

But noting that charges of "immorality" on the part of teachers still connotes sexual misconduct in the minds of many people, the Supreme Court of Alaska suggested that other grounds for dismissal be selected to avoid stigmatizing teachers for misconduct other than conduct sexual in nature. According to the Alaska court,

(The) designation or title of immorality should be removed from the catch-all definition of conduct and a definition of "conduct unbecoming a teacher" be substituted. The definition would then cover immorality in all its aspects, including all shades of unacceptable social behavior.<sup>57</sup>

Other investigators have illustrated the scope and nature of immorality as "primarily thought of in terms of sex behavior, but it has wider implications".<sup>58</sup> In one chapter of his treatise, Punke demonstrated the scope of the term "immorality" through his survey of court cases in nine broad categories. The following list shows kinds of behavior Punke found encompassed in immorality cases before the courts: (1) sex morality, (2) liquor and intoxication, (3) gambling, (4) cursing and abusive language, (5) fraud and deceit in securing and holding a job, (6) financial irresponsibility, (7) bad behavior in teaching sex education, (8) several aspects of immorality combined, and (9) immorality versus other available charges.<sup>59</sup>

In relation to defining immorality as a basis for teacher dismissal Kraus stated that,



Clearly the definitional problems fall upon the shoulders of the courts . . . each case will revolve around a determination of the particular factual situation, and it may be concluded that no precise definitive rule has yet been adopted.<sup>60</sup>

Again, in speaking to the issue of immorality as ground for teacher dismissal, Bolmeier related immorality to community morals and projected an opinion. He maintained,

Since immorality is difficult to define the court is frequently perplexed in evaluating the charge "immorality" as a cause for dismissal. In most instances a court considered a teacher immoral whose conduct offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate.<sup>61</sup>

Continuing in his latest publication on sex litigation, Bolmeier spoke to the changing judicial view of immorality in the form of unorthodox sexual behavior:

There is no doubt that society and particularly the judiciary is becoming more liberal in judging the legality of unorthodox sexual behavior. It may be noted, however, . . . that the courts are more reluctant to condone alleged sexual misconduct of teachers than of others because of potential effects on the pupils in their charge.<sup>62</sup>

As the examination of the literature has shown, surely, much perplexity exists over the concept of "immorality" and the problem of ascertaining the appropriate standard of morality. A note from the Morrison case puts the problem succinctly and serves as an appropriate culmination to this section:

In a secular society-America today-there may be a plurality of moralities. Whose morals should be enforced? There is a tendency to say that public morals should be enforced. But that just begs the question. Whose morals are the public morals?<sup>3</sup>

"Whose morals should be enforced?" As Kraus has indicated, the answer clearly rests with the courts.

**THE INFLUENCE OF THE COURTS ON SCHOOL BOARDS,  
SCHOOL POLICIES, AND IMMORALITY**

According to the literature the struggle for a common definition of immorality in the school setting and in the judicial setting is far from resolved. As courts seek to find definitions, clarify terms, and guard constitutional rights, their decisions shape educational policy and cast the courts into a more prominent role in educational matters.

In an article in the Journal of Educational Research, Stiles saw the courts as emerging policy-makers for the schools. He stated, "In the changes that are taking place, the court is emerging as the key source of educational policy."<sup>64</sup> Although Stiles spoke of general educational policy, his views included matters related to dismissal of teachers for immorality. He illustrated the erosion of school board authority and the acquisition of court authority in the following statements:

In the area of teacher-board relations, court decisions clearly define employment policies and employee-employer relations. School board policies in such matters are little more than reaffirmations of the essential details of applicable decisions and in a majority of states such board policies are subject to review and modification as a result of court decisions. . . . Clearly, court decisions make policy for education. From decisions of supporting the rights of teachers to organize and the rights of

students to dissent to those dealing with the more fundamental rights of due process and equal protection of the law, court decisions outline, and detail the policies by which schools operate.<sup>65</sup>

In a similar vein, Hogan saw the courts in a process of rapid evolution, evolving from a laissez-faire stance in the early nineteenth century to a posture of "strict construction" in school cases of today. Based on an analysis of court cases and decisions, he stated, "It is clear that a new judicial function is taking over," and then set forth five distinct stages in the evolution of the role of the courts in education:

- (1) 1789-1850 The stage of strict judicial laissez-faire
- (2) 1850-1950 The stage of state control of education
- (3) 1950-1965 The reformation stage
- (4) 1964- The stage of education under the supervision of the courts
- (5) 1973- The stage of strict construction<sup>66</sup>

In an article designed primarily for school board members, M. Chester Nolte wrote in a light vein on the issue of school boards' power in relation to the courts. He described in the American School Board Journal three separate categories of school board power: (1) power boards have and can't use, (2) power boards really don't have but insist upon wielding, and (3) power boards have and can wield but must later justify.<sup>67</sup> Included in the third category " . . . are actions that clearly are within a

board's legal bounds but which board members must be ready and able to justify, probably to a judge . . . The most clearly scrutinized board actions are those involving teachers."<sup>68</sup>

Hudgins looked at board actions in teacher dismissal instances. From his analysis of court cases, Hudgins claimed, "While you were eyeing school finance suits in the last couple of years, a string of important teacher dismissal cases that never made the front pages were moving quietly through the courts."<sup>69</sup> Hudgins examined that "string of important cases" and set forth ten commandments that "you better not break" in teacher dismissals.<sup>70</sup> Three of those commandments deal with the area of immorality as a ground for dismissal: (1) "Don't fire a teacher who has been arrested for possessing marijuana unless you have proof he can no longer function effectively in the classroom." (2) "Don't fire a teacher solely for being a homosexual unless his sexual inclination adversely affects teaching performance." (3) "Don't fire a teacher who brings alcohol into the school unless you prove 'just cause.'"<sup>71</sup> Hudgins' first commandment was based on the decision of Comings v. State Board of Education.<sup>72</sup> The second commandment was based on the decision of Burton v. Cascade School District,<sup>72</sup> and the third was based on Green v. Harrington.<sup>74</sup>

While Stiles, supra, saw the courts as a key source of

educational policy, Hazard believed the courts "have taken over." He asserted: "Myths die hard in education. But the myth of local control is in a terminal state, because the courts, along with state and federal governments, have taken over."<sup>75</sup> Hazard continued, "School board decisions are rarely accepted these days as the last work; more and more, citizens regard them as the trigger for legal confrontations."<sup>76</sup> Hazard cited Hobson v. Hansen to illustrate the court's justification for intervention in school matters:

It would be far better indeed, for these great social and political problems to be resolved in the political arena by other branches of government. But these are social and political problems which seem at times to defy such resolution. In such situations, under our system, the judiciary must bear a hand and accept its responsibility to assist in the solution, where constitutional rights hang in the balance.<sup>77</sup>

Schimmel and Fischer, in support of the increasing involvement of the courts in school matters related to teacher dismissals, maintained that until recently teachers were certainly second-class citizens.<sup>78</sup> "Only a few decades ago it was common practice to regulate all aspects of teachers' lives and to subject them to conditions of employment that violated their constitutional rights."<sup>79</sup> Schimmel and Fischer spoke to the issue of the current conflict between teachers and school board members who view themselves as guardians of community values, perhaps, against individual rights. They asserted:

Many parents, administrators, and school board members all believe that local communities can and should control the behavior of teachers. The controls they seek to impose, though less extreme than those at the beginning of the century, often lead to a partial revocation of the Bill of Rights in the lives of teachers.<sup>80</sup>

Schimmel and Fischer examined six areas of conflict in which teachers, through the courts, have made progress in acquisition of their rights as first-class citizens: (1) "Academic freedom," (2) "Freedom of speech outside the classroom," (3) "Membership in controversial organizations," (4) "The teacher's personal life," (5) "Personal appearance," and (6) "Equal protection."<sup>81</sup> Six cases are cited in which teachers were upheld in their actions questioned by employing school boards. Four of the six enumerated areas, supra, could fall within the category of immorality, and have done so in certain instances before different courts. The six areas of conflict and teacher gain, with example cases, and the author's analysis of court decisions follow:

(1) Freedom of speech in the classroom was protected under Keefe v. Geanakos.<sup>82</sup> According to the courts, as stated by Schimmel and Fischer,

Judicial protection of academic freedom is based on the First Amendment and on the belief that teachers and students should be free to question and challenge established concepts as a democratic society. Like other constitutional rights, however, academic freedom is not absolute. Hence, courts use balancing tests to decide these cases: they balance the teacher's rights to academic freedom against the competing interests of society in maintaining reasonable school discipline.

Generally this means that a teacher's use of controversial material or language is protected by the First Amendment unless a board can demonstrate that (1) it is not relevant to the subject being taught, (2) it is not appropriate to the age and maturity of the students, or (3) <sup>83</sup>it substantially disrupts the educational process.

(2) Freedom of speech outside the classroom was protected under Pickering v. Board of Education.<sup>84</sup> The authors quoted the Supreme Court in summing up the principle exemplified in Pickering: "A teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment."<sup>85</sup>

(3) The teacher's personal life was protected under Morrison v. Board of Education.<sup>86</sup> In Morrison the California Supreme Court stated, "Today's morals may be tomorrow's ancient and absurd customs."<sup>87</sup>

According to the court as interpreted by Schimmel and Fischer:

A teacher's dismissal for conduct that is considered immoral depends on the circumstances of the case: whether the conduct was personal and private, whether it became public through the indiscretion of the teacher, and whether it involved students.<sup>88</sup>

(4) Freedom of expression was protected under Finot v. Pasadena.<sup>89</sup> This case merely involved the growing of a beard to which the court said ". . . wearing of a beard is a form of expression of an individual's personality and that such a right of expression is entitled to 'peripheral protection' of the First Amendment."<sup>90</sup>

(5) Membership in controversial organizations was protected

by Keyishian v. Board of Regents.<sup>91</sup> The authors contended that, "This means that no school board or state legislature could disqualify teachers for mere membership in any revolutionary, subversive, or extremist organization."<sup>92</sup>

(6) Cases dealing with equal protection of rights by race and sex are too numerous to enumerate here. However, Schimmel and Fischer saw this area as an instance of significant gain for teachers' rights. They referred the reader to the Supreme Court decision in Bradley v. School Board of the City of Richmond.<sup>93</sup> As Schimmel and Fischer have demonstrated teacher gains in acquiring equal rights under the Bill of Rights, they have reflected the changing role of the courts and the trend toward "greater protection of teachers" as found by Davis.<sup>94</sup>

Nolte spoke to the "new judicial" attitudes as being in favor of teachers. He declared:

Teachers are suing school boards these days at the drop of a civil right . . .

The fact that there is an increase in the number of lawsuits in which teachers allege a denial of their civil rights is, certainly, a reflection of the on-again militancy that teachers are demonstrating, but it also demonstrates a significant change in the attitude of the courts toward relationships of teachers (as employees) to school boards (as employers)--no teacher is likely to bring suit if there is little chance of winning it. Therefore, the new judicial attitude can be construed as being <sup>95</sup>in favor of teachers, not school school boards.

The preceding pages in this section covered the current literature in the area of court trends as viewed by a



variety of writers. Generally the literature offers evidence of the fact that courts are moving toward greater protection of teacher rights in general and against arbitrary dismissal in particular.

#### IMMORALITY AND COURT DECISIONS

Until recently, it has been customary wisdom that illegal or immoral behavior on the part of public school teachers provided automatic grounds for dismissal. Most state tenure laws list "immorality" as one of the grounds for dismissal, or "conviction of a crime involving moral turpitude." The developments in case law during the past 20 years or so suggest, however, that neither immoral behavior nor criminal convictions may provide the automatic basis for dismissal commonly assumed by school board members and school administrators. Instead, the courts appear to be fashioning a requirement that the public employer show a causal connection, a nexus, between the illegal or immoral behavior, and performance on the job.

The earliest known case which included language suggesting the necessity for the connection is School District of Ft. Smith v. Maury.<sup>96</sup> In this case, a teacher had been discharged for unspecified immoral conduct, under a statute authorizing boards of education to dismiss teachers for "incompetency and for immorality." The Supreme Court of Arkansas reversed a trial court finding in favor of the teacher, finding errors on the part of the trial court in

refusing to admit evidence concerning the immoral behavior.

But in doing so, the court observed:

We do not mean to say that every act of immorality would be a breach of the contract to justify its termination, but it would be such whenever, from the character or notoriety of the act, it impaired the services of the teacher in properly instructing or advancing the pupils. A teacher might properly instruct, yet his character for morality be so notoriously bad that he would lose the respect of his pupils and fail to advance them. He would not then be a competent teacher, though there were no defect in his learning, or facility to impart it.<sup>97</sup>

Comprehensive treatments on the issue of teacher dismissal for immoral cause in the literature covered have been made by Bolmeier and Punke. Both writers treated immorality as one category in various treatises on the schools and the courts. Likewise, both writers treated the topic by identifying related cases and summarizing each case.

In a section dealing with teacher dismissals in The School in the Legal Structure, Bolmeier maintained that, "Analysis of many court decisions in past cases do provide some legal principles which may serve as guides to school boards, and thereby minimize litigation."<sup>99</sup> Accordingly, he set forth twelve principles as guidelines. Although all twelve of Bolmeier's legal principles are not concerned with dismissal for immoral causes per se, all twelve are pertinent, directly or indirectly, to this study and are, therefore, quoted here entirely:

1. A school board's power to dismiss a

teacher may be derived from stature, or in the absence of stature, it may stem from an implied authority to dismiss for adequate cause.

2. The power to dismiss for just cause is absolute and may not be limited by contract.

3. A teacher (as a general rule) may not be dismissed without a justifiable cause before the expiration of a contract.

4. Where the method of dismissal is prescribed by statute, such method must be followed in order for the dismissal to be valid.

5. Even though no method of procedure is set out, the teacher is entitled to notices of charges against him and to a fair hearing before an impartial board.

6. As a general rule, a removal for a cause not authorized by stature or contract and outside the discretionary power of the school authorities is invalid.

7. The burden of proof rests upon the school board in proving incompetency, because the teacher's certificate is prima facie evidence of competency.

8. The teacher has the right to have competency determined on the basis of service.

9. The board can demand of teachers only average qualifications, not the highest, in determining incompetency.

10. The teacher may seek redress in the court if he feels that the evidence presented by the board is not sufficient to establish his incompetency and if he has exhausted all administrative remedies prior to this.

11. The courts are inclined to accept the testimony of superintendents, supervisors, and principals as to a teacher's ability to perform his duties.

12. Where school board's action appears to be for the welfare of the children the dismissal of a teacher is likely to win judicial approval.<sup>100</sup>

In speaking of immorality, Bolmeier declared, "The mere allegation of immorality or poor behavior, or even a 'forced admission', thereto is not sufficient cause for a lawful dismissal of a teacher."<sup>101</sup> He further claimed, "The statutory power of a school board to discharge teachers is always freely construed and good cause includes any grounds

which is put forward by (the) board in good faith."<sup>102</sup> He was quick to add, however, that there are limits to what constitutes 'just cause' in the dismissal of teachers.

In a later work, Teachers' Rights, Restraints, and Liabilities, Bolmeier devoted a section to "Immorality as a Cause." Therein he treated two areas of immoral causes: (1) unorthodox behavior, and (2) the writing of letters. In relation to unorthodox behavior, he stated:

Unorthodox behavior has often been ruled as immoral and grounds for dismissal of teachers. The courts, however, cannot rely upon judicial precedence here because of the revolutionized social attitude toward sex. That which may have been judged immoral in sexual matters a century, or even a<sup>103</sup> decade, ago may be no longer so regarded.

In relation to letter writings as an immoral cause, Bolmeier cited Jarvella v. Willoughby - Eastlake School District Board of Education as a case in point.<sup>104</sup> According to Bolmeier, although the court ruled in favor of the teacher, it offered suggestions to school boards to serve as guidelines in restraining the conduct of teachers. The court wrote:

The board can only be concerned with "immoral conduct" to the extent that it is, in some way, inimical to the welfare of the school community. The private speech or writings of a teacher, not in any way inimical to that welfare, are absolutely immaterial in the application of such standard. . . . This opinion applies to the facts of this case alone and is not intended to suggest that school boards may not discharge teachers for "immorality" consisting of vulgar<sup>or</sup> obscene writings in the light of other facts.<sup>105</sup>

In another publication of the same year, Bolmeier

examined Landmark Supreme Court decisions on public school issues in a book by the same title.<sup>106</sup> Therein he analyzed three cases that could conceivably be categorized as immorality: (1) Beilan v. Board of Education (Dismissal for refusal to reveal association), (2) Keyishan v. Board of Regents (Dismissal for refusal to sign affidavit of non-affiliation with Communist party), and (3) Pickering v. Board of Education (Dismissal for expression of public concern). The Supreme Court ruled in favor of the teacher in the two latter cases, and in favor of the school board in the Beilan case. The legal principle quoted by Justice Burton in the Beilan case is worth noting in relation to this study.

A teacher works in a sensitive area in a schoolroom. There he shapes the attitudes of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen officials, teachers, and employees as to their fitness to maintain the integrity of the schools, as a part of ordered society, cannot be doubted.<sup>107</sup>

Bolmeier's publication, Sex Litigation and the Public Schools, devoted one chapter to the "Legal Limitations of Sex Behavior." He grouped sexual misconduct into three categories of immorality: "Homosexuality", "Adulterous and other illicit acts", and "Bizarre cases of sexual behavior."<sup>108</sup> Each category is illustrated by several recent court cases. Since some of the cases used by Bolmeier will be treated in Chapters Three and Four of this

study, Bolmeier's analysis will not be discussed here. The most significant legal principle to emerge from Bolmeier's examination is the one taken from Erb v. Iowa State Board of Public Instruction, " . . . conduct must adversely affect the teacher-student relationship before revocation will be approved."<sup>109</sup>

In his treatise on school law entitled The Teacher and the Courts, Punke stated:

The moral code for teachers is more rigid than for people in many vocations. This seems largely because parents look upon teachers as models for imitation by children and because many parents hope their children will live on a higher moral plane than the parents do.

While many people think of morality primarily in terms of sex behavior, it has wider implications as ground for teacher dismissal.<sup>110</sup>

One chapter in Punke's book is devoted to "immorality."<sup>111</sup> It is an examination of court cases dealing with teacher dismissal for immoral causes through 1970. The major importance of Punke's study is the classification of cases on immorality beyond sexual misconduct. Included in this study as immorality are such acts as intoxication, gambling, cursing, fraud and deceit, family quarrels, financial irresponsibility, bad behavior in teaching sex education, notoriety, vulgarity, dishonesty, and criminal indictment.

In the North Dakota Law Review Behling examined the legal gravity of specific acts in cases of teacher dismissals.<sup>112</sup> In relation to dismissal for immoral causes,

Behling listed six acts which are severe enough in legal gravity to merit court concurrence with board dismissals: (1) improper conduct in contracting for teacher position (Brown v. St. Bernard Parish School Board), (2) falsification of an application record (Negrich v. Dade County Board of Public Instruction), (3) presenting oneself as a poor example for children (Grover v. Stoval), (4) drunkenness at school (Tracy v. School District No. 22, Sheridan County), (5) calling the superintendent an "S.O.B.", (Mackenzie v. School Committee of Ipswich), and (6) assault and battery (Baird v. School District No. 25). Behling's cases in point, supra, dealt with rather old court decisions, the most recent case being decided in 1961.

Two legal principles that have become the central issue in teacher dismissals and subsequent litigation are "the right to privacy" and demonstration of a "nexus between alleged immoral acts and fitness to teach."

Carlton provided a thorough analysis of Pettit v. State Board of Education in comparison with Morrison v. State Board of Education and Purifoy v. State Board of Education.<sup>113</sup> All three examples are California cases involving license revocation for immorality as specified in the state statutes, and each involved the principles of privacy and fitness to teach. Carlton drew two distinctions between Morrison in contrast to Pettit and Purifoy: the "criminality distinction" and the "privacy distinction." He

concluded:

The law emerging from Morrison, Purifoy, and Pettit will not please those who prefer clearly delineated standards of legally protected behavior; Pettit especially seems to obscure the the significance of clear standards established in Morrison.

One problem in future revocation cases will be the weight given to criminally punishable misconduct in the determination of a teacher's fitness to teach . . .

The more difficult problem raised in these cases is the extent to which a teacher's constitutional right to privacy protects him from credential revocation proceedings stemming from the Board's objection to his private conduct.<sup>114</sup>

Carlton continued to speak on the issue of privacy. He stated: "Conceivably, the state's interest in maintaining the quality of its teachers and the moral integrity of its schools is sufficiently compelling to override the right to privacy." "But, this is not clear."<sup>115</sup>

Ostrander dealt with the "right to privacy" principle through analysis of the Morrison case, supra, and the Maryland case of Acanfora v. Board of Education of Montgomery County.<sup>116</sup> From his analysis Ostrander asserted:

. . . the power of the state to regulate professions and conditions of government employment must not arbitrarily impair the right of the individual to live his private life, apart from his job, as he deems fit.<sup>117</sup>

He concluded: "Teachers whose nonconventional behaviors are practiced with discretion, particularly in the privacy of their own homes, will be protected by the courts."<sup>118</sup>

Ostrander magnified the concept, or principle, stated by the



Acanfora court: "A duty to privacy." His brief conclusion to his article follows:

The conduct of teachers is subject to reasonable control by school officials. In matters involving nonconventional sexual behavior, school officials can discipline and dismiss teachers when it can be shown that their behavior is detrimental to an orderly educational process. School officials cannot substitute their sense of morality for that of their teachers. Teachers whose nonconventional behaviors are practiced with discretion and with regard to their reputations, particularly when practiced in the privacy of their homes, are likely to meet with the protection of the courts. The delicate balance between the private rights of teachers and the interests of school officials in protecting the integrity of the educational process is summed up in the principle, the teacher has a duty to privacy.<sup>119</sup>

Another article relating to a teacher's right to privacy was written by Walden in the Elementary School Principal.<sup>120</sup> In it Walden discussed Drake v. Covington County Board of Education,<sup>121</sup> a case which turned on the nature of the school board's evidence and a citizen's right to privacy. Walden stated that Drake and others suggest a difference between conduct that is "private" and conduct that is "public." In speaking to the issue of immorality, he maintained:

'Immorality' is easier to define when the proscribed behavior takes place in public or when it is so open that the public has general knowledge of it. A teacher's private behavior, so long as it remains private, is not subject to an employer's scrutiny.<sup>122</sup>

Perhaps the most comprehensive treatment of teacher dismissal in the literature is found in the American Law Reports, Annotated.<sup>123</sup> Volume 97 carries an annotated

analysis of all dismissal cases in courts covered by the Reports. Within that context is a section dealing with "Specific conduct as constituting moral unfitness." Cases are grouped into two categories: (1) "Conduct involved was not held to be of the type which would support revocation of license to teach," and (2) "Particular conduct which was held to constitute immorality sufficient to affect fitness to teach." Two observations gleaned from the annotations are presented here. The first deals with the nexus between the immoral act and classroom performance:

Where the courts have been presented with the question whether or not specific conduct of a teacher constitutes moral unfitness which would justify revocation, they have apparently required that the conduct must adversely affect the teacher-student relationship before revocation will be approved.<sup>124</sup>

The second issue deals with the possibility of judicial review:

. . . the question whether an administrative determination of revocation is subject to judicial review has been answered in the light of the pertinent statutes, with the results varying according<sup>125</sup> to the statutes and circumstances involved.

Another volume of the American Law Reports deals with the "Use of illegal drugs as grounds for dismissal of teachers . . ." The important legal principle that emerges from analysis of pertinent cases covered by the Reports follows:

. . . use of illegal drugs by a teacher may constitute ground for dismissal, or denial or cancellation of a teacher's certificate, to the

extent that such conduct adversely affects the teacher-student relationship and evidences unfitness to teach.<sup>126</sup>

The examination of the literature supports Edwards' declaration: "It is well established that the dismissal of a teacher by a board of education is not final and conclusive."<sup>127</sup> Hoffman spoke to the increased volume of litigation initiated by teachers by alluding to different role perspectives and reasons for the change in teacher rights. He maintained:

The rights of teachers, as seen and understood by the public, have changed somewhat during the past decade or two. But the rights of teachers, as perceived by teachers, have changed radically during that same period of time. This disparity in the perception of roles, rights and responsibilities of teachers has created tensions heretofore unknown in the educational profession.<sup>128</sup>

According to Hoffman the reasons for the change in teacher rights and attitudes can be attributed to four factors: (1) general relaxation of social restraints on all people, (2) improved educational standards of teachers and administrators, (3) organizational efforts of the teaching profession and the usurpation of responsibilities, (4) decisions in various court cases which have confirmed many common rights for teachers.<sup>129</sup> In summary, Hoffman asserted: "The courts are aware of the rights and responsibilities of school boards to administer their schools, but they must also be zealous in protecting the rights of individual teachers who teach in these

districts."<sup>130</sup>

The literature and the examination of court cases in Chapters Three and Four of this study indicated a large number of the immorality cases deal with homosexuality. Nolte raised a note of caution in dealing with "gay" teachers in the classroom. He asserted:

Because the state controls licensing, employment and tenuring of public school teachers (and also revokes their certificates for cause), the question of homosexuality among teachers usually has been a problem for state courts to handle. Several recent cases, however, have been based upon an individual's right to privacy. And in such instances, boards of education have had to show cause why the declaration of homosexuality constitutes basis for dismissal, owing, say, to an undesirable effect a gay person might have on students or perhaps basic unfitness to teach.<sup>131</sup>

In Nolte's advice to school boards concerning contemplated dismissal of a homosexual teacher, he stated, "His (the teacher) being homosexual (even self-proclaimed) generally is not cause for firing a gay teacher."<sup>132</sup>

Nolte examined Wood v. Strickland and advised school boards accordingly. Although the Wood case did not deal with immorality or teacher dismissal, Nolte's reasoning is applicable to teacher dismissal cases and an appropriate culmination of the review of the literature for this study. He declared: "School boards seldom get into trouble when they exercise their legislative or administrative powers. It's when they act as judicial bodies that they so often land in court--and lose."<sup>133</sup>

#### SUMMARY OF THE LITERATURE

Traditionally, "immorality" was what school boards said it was. Boards have enjoyed wide discretion in determining immorality as a basis of teacher dismissal. Generally, the courts have deferred to school boards the right to determine cause. Therefore, relatively few dismissal cases concerned with immorality reached the courts. But unlimited board discretion is not the case today. Teachers sue school boards at the drop of a civil right.

Many of the legal problems center around the ambiguity of the term "immorality" and the often challenged right of school boards to make such determinations in disciplining teachers for immoral conduct.

Philosophers and courts attempt to define morality. Both see morality as a cultural phenomenon, like law on the one hand and convention on the other, and rooted in community mores. Part of the disagreement over the term "morality" or "immorality" stems from the lack of agreement on a common set of mores. It appears that cultural mores stay in a state of flux or there exist many subcultural mores rather than a common set of mores and a common morality. Courts have observed that morality is inseparable from conduct and "immorality" is conduct hostile to the general public. Likewise, they have broadened the term "immorality" to encompass many types of teacher behavior beyond those which are sexual. Surely, the

definitional problems of "immorality" fall upon the courts, and accordingly, the courts are emerging as a key source of educational policy.

The literature further indicated that teachers have made considerable progress through the courts in moving from second-class citizenship, as far as the Bill of Rights is concerned, to full protection of rights as first-class citizens. When the courts are involved they must balance the teacher's constitutional rights against competing interests of society in maintaining school discipline and integrity.

A teacher's dismissal for conduct that is considered immoral depends on the circumstances of the case: whether the conduct was personal and private, whether it became public through the indiscretion of the teacher, and whether it involved students. But the trend is clearly toward greater protection for the teacher. According to Nolte, the new judicial attitude is in favor of teachers--not school boards.

So many factors are involved in teacher dismissals, that it is impossible to lay down a single rule defining a school board's legal latitude. However, court rulings do provide some guidelines for school boards in dismissable cases. Bolmeier offered twelve such guidelines, or legal principles.

In order for dismissals for immorality to stand, the

alleged acts must be in some way inimical to the welfare of the school community; the conduct must adversely affect the teacher-student relationship. Likewise, there must be a clear nexus between the immoral act and fitness to teach.

The literature indicates that the "right to privacy" has become a central issue in dismissal cases based on grounds of immorality. One of the most difficult problems is the extent to which a teacher's constitutional right to privacy protects him from a dismissal stemming from a school board's objection to his private conduct. According to Ostrander the power of the state to regulate professions and conditions of government employment must not arbitrarily impair the right of the individual to live his private life, apart from his job, as he deems fit. There is a difference between private conduct and public conduct. As long as conduct is private, it is not subject to employer's scrutiny.

The degree of proof needed in teacher dismissal cases involving charges of immorality does not necessarily have to be equal to proof required in criminal cases, but the school board must properly find an individual not fit to teach if the dismissal is to stand.

A school board has the right to inquire into a teacher's personal associations and lifestyle but cannot use impermissible inferences from such inquiry. Nor can boards dismiss teachers for arbitrary or capricious reasons.

Teachers' rights have changed. So have teachers' views of their rights and public views of teachers' rights changed, and are viewed differently. This disparity in the perception of roles, rights, and responsibilities of teachers has created many tensions and much litigation. School boards and the courts are caught in the middle of the conflict. Courts are aware of the rights and responsibilities of school boards to administer their schools, but they must also be zealous in protecting the rights of teachers who work in their schools.

Based on the literature, and the court cases reflected in the literature, the vast majority of immorality suits are concerned with sexual behavior, and especially with homosexuality, as immoral conduct on the part of teachers.

Individual perceptions of immorality are so diverse that the courts are involved perennially in deciding such matters. Likewise, teachers no longer can be expected to lay down their constitutional rights as a condition for continued employment. School boards, and school officials as agents of the boards, must now deal with the courts on teacher dismissal matters that once were treated as routine matters of board judgment.

The literature on the topic of teacher dismissals related to immoral causes is voluminous. A representative sample of the literature has been examined and presented in this chapter as an overview of the topic under study.



The following two chapters examine court cases dealing only with teacher dismissal due to immorality during the two time periods pertinent to this study, 1966-1971 and 1981-1986.

## NOTES

<sup>1</sup> Daniel Gatti and Richard Gatti, The Teacher and the Law (West Nyack, N. Y.: Parker Publishing Co., 1972), 67.

<sup>2</sup> Id.

<sup>3</sup> Floyd Delon, Legal Issues in the Dismissal of Teachers for Personal Conduct (Topeka, Kansas: National Organization of Legal Problems in Education, 1982), 2.

<sup>4</sup> David Rubin, The Rights of Teachers (New York: Avon Books, 1968), 3.

<sup>5</sup> Willard S. Elsbree, The American Teacher (New York: American Book Co., 1939), 288.

<sup>6</sup> Id. at 296.

<sup>7</sup> Louis Fischer and David Schimmel, The Civil Rights of Teachers (New York: Harper & Row Publishers, 1973), 4-5.

<sup>8</sup> Josiah Royce, "The Freedom of Teaching," Overland Monthly (1883), 235, 239.

<sup>9</sup> Leslie Allen, Bryan and Darrow at Dayton (New York: A. Lee and Company, 1925), 109.

<sup>10</sup> Alfred C. Ewing, "Blue Laws for School Teachers," Harpers Magazine (1928), 329-338.

<sup>11</sup> Education, New York State (May, 1971), 32.

<sup>12</sup> Louis Fischer and David Schimmel, The Rights of Students and Teachers (New York: Harper & Row Publishers, 1982), 2.

- 13 Elsbree, supra, at 535.
- 14 Delon, supra, at 3.
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- 26 T. M. Stinnett, Professional Problems of Teachers (1968), 242
- 27 Betty E. Sinwitz, "Teacher's Right to Privacy,"

Today's Education 62 (1973), 89.

<sup>28</sup> John C. Walden, "A Right to Privacy" The National Elementary Principal 53 (1975), 72.

<sup>29</sup> M. A. McGhehey, "Illegal or Immoral Behavior and Performance in the Classroom: The Necessary Nexus," New Directions in School Law, (1976), 162.

<sup>30</sup> John C. Davis, "Teacher Dismissal on Grounds of Immorality," Clearing House 46 (1972), 422.

<sup>31</sup> H. C. Hudgins, Jr., "The Law and Teacher Dismissal: Ten Commandments You Better Not Break," Nation's Schools 93 (March, 1974), 40.

<sup>32</sup> Kenneth H. Ostrander, "The Teacher's Duty to Privacy: Court Ruling on Sexual Deviancy Cases," Phi Delta Kappan 57 (1975), 20.

<sup>33</sup> The Wall Street Journal, 28 Jan. 1975: 1.

<sup>34</sup> "Private Lives," Newsweek, 24 Feb. 1975: 87.

<sup>35</sup> Samuel N. Francis and Charles E. Stacey, "Law and the Sensual Teacher," Phi Delta Kappan, 59 (1977), 98.

<sup>36</sup> Thomas J. Flygare, "Supreme Court Refuses to Hear the Case of Discharged Homosexual Teacher," Phi Delta Kappan, 59 (1978), 482.

<sup>37</sup> Thomas Fleming, "Teacher Dismissal for Cause: Public and Private Morality," Journal of Law and Education 7 (1979), 423.

<sup>38</sup> Perry Zirkel and Ivan Gluckman, "A Legal Brief: Teacher Dismissal for Immorality" National Association of

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<sup>40</sup> North Carolina General Statute, Sec. 115C-325 (e) (1) (b).

<sup>41</sup> School District of Ft. Smith v. Maury, 14 S.W. 669 (Ark. 1890).

<sup>42</sup> Burton v. Cascade School District, Union High School No. 5, 353 F. Supp. 254 (D. Ore. 1973).

<sup>43</sup> Bernard Gert, The Moral Rules (New York: Harper & Row, Publishers, 1970), 3.

<sup>44</sup> Id.

<sup>45</sup> Id. at 4.

<sup>46</sup> Id.

<sup>47</sup> Id. at 128.

<sup>48</sup> William K. Frankena, Ethics (Englewood Cliffs, N. J.: Prentice Hall, Inc., 1973), 8.

<sup>49</sup> Id. at 7.

<sup>50</sup> Id. at 6.

<sup>51</sup> Id.

<sup>52</sup> Edward C. Bolmeier, Sex Litigation and the Public Schools (Charlottesville, Va.: The Michie Company, 1975), 5.

<sup>53</sup> Harry K. Giruetz, Beyond Right and Wrong (New York: The Free Press, 1973), 16.

<sup>54</sup> Edward C. Bolmeier, Teachers' Rights, Restraints and Liabilities (Cincinnati: W. H. Anderson Co., 1971), 20.

<sup>55</sup> Id.

<sup>56</sup> Schuman v. Pickett, 277 Mich. 225, 269 N. W. 152 (1963), Cited by Bolmeier, Teachers' Rights, Restraints and Liabilities, 20.

<sup>57</sup> Bolmeier, supra, at 20.

<sup>58</sup> Harold H. Punke, The Teachers and the Courts (Danville, Ill.: Interstate Printers and Publishers, 1971), 584.

<sup>59</sup> Id. at 584-594.

<sup>60</sup> Kenneth Kraus, "The Effect of the Stull Bill on Teacher Dismissals," Lincoln Law Review, IX (1974), 96.

<sup>61</sup> Bolmeier, supra note 52, at 5.

<sup>62</sup> Id.

<sup>63</sup> Morrison v. State Board of Education, 461 P. 2d 375 at 384 (Cal. 1969).

<sup>64</sup> Lindley J. Stiles, "Policy and Perspective," The Journal of Educational Research, 67 (March, 1974), front inside cover.

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<sup>66</sup> John C. Hogan, The Schools, The Courts, and the Public Interest (Lexington, Mass.: D. C. Heath and Company, 1974), 5-6.

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<sup>86</sup> Morrison v. State Board of Education, 1 Cal. App. 3d 214, 74 Cal. Rptr. 116 (1969).

<sup>87</sup> Id.

<sup>88</sup> Schimmel and Fischer, supra, at 270.

<sup>89</sup> Finot v. Pasadena City Board of Education, 250 Cal. 2d 189, 58 Cal. Rptr. 520 (1967).

<sup>90</sup> Schimmel and Fischer, supra, at 272.

<sup>91</sup> Keyishian v. Board of Regents, 385 U. S. 589 (1967).

<sup>92</sup> Schimmel and Fischer, supra, at 274.

<sup>93</sup> Bradley v. School Board of the City of Richmond, 382 U. S. 103 (1965).

<sup>94</sup> Davis, supra, at 27.

<sup>95</sup> M. Chester Nolte, "Those Ugly Lawsuits and Why More Teachers are using Them to Collect from Boardmen," American School Board Journal, 158 (Dec. 1970), 34.

<sup>96</sup> School District of Ft. Smith v. Maury, supra Note 41.

<sup>97</sup> Id.

<sup>98</sup> Edward C. Bolmeier, The School in the Legal Structure (Cincinnati: W. H. Anderson Co., 1968), 193.

<sup>99</sup> Id.

<sup>100</sup> Id. at 194.

<sup>101</sup> Id. at 196.

<sup>102</sup> Id.

<sup>103</sup> Bolmeier, supra note 54 at 21.



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- 120 John C. Walden, "A Right to Privacy," Elementary School Principal, L111 (July-August 1974), 86-88.
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- 122 Walden, supra, 88.
- 123 Leemoria Crawford and Asemo Nastos et al., 97 ALR 2d 828.
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- 126 Don F. Vaccaro, 47 A.L.R. 3d 754.
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## CHAPTER III

## REVIEW OF COURT CASES FROM 1966 TO 1971

More states list immorality as a ground for dismissal and license revocation of teachers than any other single cause.<sup>1</sup> The statutes of each of the fifty states contain provisions regulating certain aspects of teacher behavior. The implied and sometimes expressed legislative intent of such laws is to protect the children and youth enrolled in the public schools and to safeguard the public funds allocated for the support of these schools. Most of these statutes enumerate and/or define the undesirable conduct and specify the penalties to be assessed.<sup>2</sup>

The Supreme Court of Louisiana like many other courts, has indicated that morality is relative to geographic areas; thus, the courts are the agents for deciding what is moral or immoral:

Since that which might be considered immoral in one locality or section of this state might be deemed moral in another locality or section, in any given case it is left to the court to determine and decide what is an immoral purpose.<sup>3</sup>

Morality or immorality is relative to circumstances, place, and time. The Hobson court has said that in these social and political problems which seem at time to defy solution, the court must bear a hand and accept its responsibility to assist in the solution where constitutional rights hang in the balance.<sup>3</sup> Thus, the stage for litigation is set.

## INTRODUCTION AND OVERVIEW

The number of lawsuits involving teacher dismissals during the period of time from 1966 to 1971 is great, indeed. Cases selected for examination in this study met three criteria: (1) the case must have been based on immorality as the cause of dismissal, or the act, if based on other grounds for dismissal such as "unbecoming conduct" and "evident unfitness", must be of such nature that it could be classified as immoral in other situations and under other state statutes; (2) the case must have been decided during the five-year period, 1966 - 1971. Landmark cases back to 1939 are included to provide the reader with contrast and a broader perspective of court trends; (3) the cases selected must have demonstrated the breadth of immorality in teacher dismissals, not just immorality related to sexual misconduct.

As might be expected in a changing society, the bulk of the litigation concerned with immorality of teachers is in the broad area of sexual misconduct and attitudes. Therefore, the greater weight of this study deals with major representative sex cases; whereas, relatively minor cases in other areas of immorality are included to demonstrate the various kinds of conduct that have been treated as immoral and to show how the courts have treated such cases.

The year 1939 was chosen as a beginning point for this section because the landmark case of Horosko v. School

District of Mt. Pleasant<sup>4</sup> of that year not only influenced teacher/board relationships and role perspectives, but the courts for three decades. In effect, the Horosko case established that a teacher forewent certain constitutional rights in accepting the position of teacher, and that as an exemplar of moral conduct before children and the community, her private as well as public conduct was subject to close scrutiny and board control. Two decades after Horosko, its principle, although waning, was still evident in Beilan v. Board of Education.<sup>5</sup> In Beilan, the United States Supreme Court still held that a teacher's conduct outside the classroom was subject to school board control. The Court held that, "We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining fitness."<sup>6</sup>

In Morrison v. State Board of Education<sup>7</sup> the court modified the Horosko principle so that not all conduct outside school is subject to school board scrutiny. The court declared, in essence, that the teacher has a right to privacy but unless the alleged immoral act can be proven to affect adversely the teacher-student relationship, dismissal will not survive strict judicial scrutiny. Thus, Morrison established the principle of nexus between private acts and classroom.

In the following cases an attempt is made to offer enough narrative to capture the essence of each case in

simple language. Cases were classified and examined in four broad areas. They are: immorality in general, homosexuality, sexual misconduct other than homosexuality, and alcohol and drugs.

### THE IMMORALITY CASES

An increasing number of courts now hold that teachers cannot be dismissed for personal conduct simply because it is contrary to the mores of a community. The fact that a teacher had done something most people regard as immoral is not by itself sufficient grounds for dismissal. To dismiss such a teacher there must be substantial evidence that the immorality is likely to have a negative effect on his or her teaching. As long as competence as a teacher is unaffected, most courts hold that private behavior is a teacher's own business.<sup>8</sup>

#### Immorality in General

Drinking and Public Misconduct. *Horosko v. School District of Mount Pleasant Township*, 335 Pa. 369, 6 A. 2d 866 (1939).

This case involving immorality is presented first and serves as a beginning point for this study due to (1) its forthright statement on exemplary responsibilities of teachers, (2) its claim that teachers must give up certain constitutional rights as members of the teaching profession, and (3) its controlling influence in later adjudications.

This early Pennsylvania case is one of the most often quoted immorality cases on record and is completely

unrelated to sexual misconduct as immorality. Horosko taught as an elementary school teacher in the small community of Mount Pleasant. She married the owner of a local beer garden and worked as a waitress during the summer months and in the evenings after school hours during the school term. The court record shows that students and citizens in the school community saw her not only working at the beer garden, but on occasions also drinking beer with customers. Testimony showed also that she sometimes offered instruction on the fine points of pinball machine operation. Occasionally she was seen rolling dice for a drink.

Although there was neither evidence nor charge that her beer drinking was ever excessive or her conduct disorderly, the Supreme Court of Pennsylvania upheld her dismissal.

In sustaining dismissal the court spoke to the nature of immorality and the exemplary responsibility of teachers:

. . . immorality is not essentially confined to a deviation from sex immorality; it may be such a course of action as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate . . . . (Id. at 868).

Further, the court indicated that a different standard of conduct and public scrutiny is required for teachers not required of others:

It has always been the recognized duty of the teacher to conduct himself in such a way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations (Id. at 868).

The two legal concepts illustrated in the court statements above were reflected in teacher dismissal litigation for at least three decades following Horosko.

Vulgarity. Jarvella v. Willoughby - Eastlake City School District Board of Education, 233 N. E. 2d 143 (Ohio 1967).

Jarvella's dismissal was based on a charge of "immorality" stemming from two private letters he wrote containing vulgar words. The two letters were written to a recently graduated former student of Jarvella's. According to the court record the letters containing language which many adults would find gross, vulgar, and offensive, would be unsurprising and fairly routine by some eighteen-year-old boys.

The letters were sent to the former student, Nichols, by first class mail in sealed envelopes. Later, Nichols' mother found the letters among her son's personal effects. She turned the letters over to the police department. Subsequently the letters were turned over to the school district. Jarvella was suspended during investigation, then reinstated.

Somehow the local newspapers picked up the incident of the letters, and numerous articles appeared. The county attorney was quoted in the newspapers as having read the letters and described them as hardcore obscenity, and the writer as unfit to be a teacher.

Subsequently, the school board met in special session



and terminated the teacher's contract for "immorality".

On appeal, the school board's decision could not stand.

The court ruled:

Teacher's private conduct is proper concern to those who employ him only to the extent that it mars him as a teacher; his private acts are his own business and may not be basis of discipline where his professional achievement is unaffected, and school community is placed in no jeopardy (Id. at 144).

Thus, this case illustrates a waning of the Horosko influence and the beginning of a foundation for the Morrison decision to follow. In essence this opinion began to dissolve the earlier court tendencies to impose moral standards of the community upon teachers as a condition of employment.

Vulgar and obscene expressions. Keefe v. Geanakos, 418 F(2d) 359 (Mass. 1969).

A much publicized case, Keefe v. Geanakos, is illustrative, where an English teacher was dismissed for the reading assignment to a senior English class of a controversial article, "The Young and the Old." In reviewing the facts of the case, the court noted that the teacher discussed the article, and made particular reference to a word that was used therein, and explained the word's origin and context, and the reasons the author had included it. The word, admittedly highly offensive, is a vulgar term for an incestuous son. The liberal viewpoint of the court in this case is reflected in its concluding statement:

Hence the question in this case is whether a teacher may, for demonstrated educational purposes quote a "dirty" word currently used in order to give special offense, or whether the shock is too great for high school seniors to stand. If the answer were that the students must be protected from such exposure, we would fear for their future. We do not question the good faith of the defendants in believing that some parents have been offended. With the greatest of respect to such parents, their sensibilities are not the full measure of what is proper education (Id. at 361-362).

Vulgar and obscene language. Parducci v. Rutland, 316 FSupp 352 (Ala. 1970).

This is a somewhat similar case to Keefe and grew out of the dismissal of a teacher for assigning, as outside reading in an English class, a story entitled "Welcome to the Monkey House," which was a comic satire written by a prominent author to explain "one particular genre of western literature." School officials described the story as "literary garbage" because it condoned "the killing off of elderly people and free sex."

Plaintiff teacher asserted in her complaint that her dismissal for the reading assignment violated her first amendment right to academic freedom. The court ruled in favor of the teacher and emphasized that "the right to teach, to inquire, to evaluate and to study is fundamental to a democratic society."

The court concluded by stating:

When a teacher is forced to speculate as to what conduct is permissible and what conduct is proscribed, he is apt to be overly cautious and reserved in the classroom. Such a reluctance on

the part of the teacher to investigate and experiment with new and different ideas is anathema to the entire concept of academic freedom (Id. at 357).

Vulgar and obscene language. Mailloux v. Kiley, 323 F. Supp 1387 (D. Mass. 1971).

The issue of using obscene language was again litigated in a federal case, Mailloux v. Kiley, when a federal district court upheld a teacher's action against a school board which discharged him for writing a slang word for sexual intercourse on the blackboard, and in discussing it as a taboo word before his eleventh grade class.

The court, finding that the teacher's method had a "serious educational purpose," commented as follows:

We do not confine academic freedom to conventional teachers or to those who can get a majority vote from their colleagues. . . . The teacher whose responsibility has been nourished by independence, enterprise, and free choice becomes for his students a better model of the democratic citizen. His examples of applying and adapting the values of the older orders to the demands and opportunities of a constantly changing world are among the most important lessons he gives to youth (Id. at 1391).

Vulgar and obscene language. Ginzburg v. United States, 383 U.S. 463 (1966).

The Ginzburg case is much publicized where Justice Brennan discussed three elements which a majority of the Court seemed to consider material in proving obscenity:

The first element considered necessary for determining obscenity is that the dominant theme of the material taken as a whole must appeal to the prurient interest in sex (Id. at 478).

The second element for determining obscenity is

that the material must be patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters . . . (Id. at 479).

A third element which is required to establish obscenity is that the material must be utterly without redeeming social value . . . (Id. at 480).

Vulgar and obscene language. Pyle v. Washington City School Board, 238 So. 2d 121, (Fla. App. 1970).

Six months after being hired as a band instructor at a Florida high school, Robert Pyle was suspended for incompetency and immorality. The suspension followed an investigation in response to complaints by several parents and students. These included objections to remarks he had made in a co-ed class relating to sex, virginity, and premarital sexual relations.

Pyle claimed that the suspension violated his constitutional rights and took his case to court. The court, however, ruled that there was sufficient evidence to support the school board's action. Concerning Pyle's controversial statements the court commented:

There was evidence of unbecoming and unnecessary risque remarks made by the petitioner (Pyle) in a class of mixed teenage boys and girls which we agree with the School Board were of an immoral nature (Id. at 121).

In an extraordinary concluding statement blending social commentary, judicial criticism, and legal opinion, the Florida court upheld the decision of the school board by writing:

It may be that topless waitresses and

entertainers are in vogue in certain areas of the country and our federal courts may try to enjoin our state courts from stopping the sale of lewd and obscene literature and the showing of obscene films, but we are still of the opinion that instructors in our schools should not be permitted to so risquely discuss sex problems in our teenage mixed classes as to cause embarrassment to the children or to invoke in them other feeling not incident to the courses of study being pursued (Id. at 123).

Moral Influence. Moore v. Board of Education of Chidester School District No. 59, 448 F.2d 709 (8th Cir. 1971).

An Arkansas board of education was unable to justify its dismissal of a black teacher in this 1971 discrimination case. The board argued that she failed to meet minimum qualifications for employment in "that she would not be a proper moral influence on children" citing her illegitimate pregnancy and her problems managing her personal finances (Id. at 714). The Court of Appeals for the Eighth Circuit rejected this argument pointing out that since this conduct had not disqualified her from teaching in the school district's segregated black school, it should not serve as a basis for refusing her employment in an integrated school.

Budgetary reasons. Spencer v. Laconia School District, 107 N.H. 125, 218 A(2d) 437 (1966).

In this 1966 case, the Supreme Court of New Hampshire held that dismissal of plaintiff teacher for "budgetary reasons constituted violation of statute providing that school board may dismiss any teacher found to be immoral or incompetent or one who does not conform to regulations

prescribed."

Insubordination. Watts v. Seward School Board, 395 P. 2d 591, 454 P. 2d 732 (Alaska 1969).

This rather unusual case is presented here to demonstrate the scope of behaviors classified as immoral across the nation.

The case involved two teachers, Watts and Blue, who taught in the small Seward School System, which consisted of a staff of only thirty teachers. The two teachers were dismissed for "immorality" for the following conduct. They wrote and distributed an open letter critical of the superintendent and his administration of school matters. In the distributed literature they accused the superintendent of such things as causing friction among teachers and students, of stating he was going "to get" one-third of the staff this year and an equal number the following year.

Further, the two teachers tried to organize the union and the teachers' association behind their cause. Many other charges leveled against the superintendent tended to stress his "dictatorial" behavior as superintendent.

The teachers were dismissed for immorality and the charge was affirmed by the courts. Litigation of the case through the various state and federal courts extended over nearly a decade. The United States Supreme Court remanded the case once, certiorari was denied, and finally a rehearing was denied.

The courts made a distinction between Watts and Pickering: In Pickering the statements were made in good faith; in Watts they were made with a reckless disregard of truth. In Pickering the issue involved speaking out on matters of public interest; in Watts the issue was on making public attacks on one's superiors.

Alaska has statutory definition for "immorality" which includes all conduct which tends to bring an individual concerned or the teaching profession in public disgrace or disrespect. The action of the teachers here was found to do that; namely, the overt actions and false statements designed to remove from office the superintendent and school board, and soliciting other teachers on school grounds exceeded statutory protection.

Lying. Hale v. Board of Education, 234 N.E. (2d) 583 (Ohio 1969).

Conduct of teachers off school premises frequently is a basis for dismissal proceedings. One such situation was considered by the Supreme Court of Ohio in Hale. The question on appeal was whether the board of education could terminate a teacher's employment because of the following happenings: the teacher's automobile struck the rear fender of an unoccupied parked automobile (there was no evidence of appreciable damage to either car); the teacher knew he had struck the other car, but denied having done so both to a witness who followed him and to a police officer who later

arrested him; the teacher was fined and was given a ten-day suspended sentence. The teacher was dismissed on the basis of this incident and on a charge that his classroom conduct was inefficient.

The court observed that evidence on the latter charge was very limited. The principal had made only one visit to the teacher's room prior to the incident, and nothing about his inefficiency had been called to the teacher's attention before the incident. Further, there was no evidence to support general criticisms of his efficiency. In holding that cause for dismissal had not been established, the court spoke as follows:

We recognize that what Hale did, in leaving the scene of the accident and in denying to the witness and the police officer his part therein, may adversely reflect upon his character and integrity. However, in our opinion, this single isolated incident . . . would not represent, within the meaning of [the tenure statute] "other good and just cause" for termination of Hale's contract as a teacher.

In construing the words, "other good and just cause," we note that they are used with the words "gross inefficiency or immorality" and "willful and persistent violations" of board regulations. In our opinion, this indicates a legislative intention that the "other good and just cause" be a fairly serious matter. Thus, where only a single crime is involved, the crime would either have to be a more serious one or involve a more serious fact situation than that here involved.

#### HOMOSEXUALITY

Cases involving the rights of homosexuals became more and more numerous during the late 1960s and early 1970s as governmental agencies attempted either to discharge



employees because of their homosexual tendencies or refused to hire them because they are homosexuals. Many homosexuals began to openly admit their preference for members of their own sex and many of these individuals banded together to promote their cause.

Sarac v. State Board of Education, 57 Cal. Reprtr. 69 (1967).

Thomas Sarac was arrested and charged with making a "homosexual advance" to L. A. Bowers at a public beach in the city of Long Beach, California. Sarac was a secondary school teacher, Bowers a police officer. The arrest resulted in Sarac's conviction for disorderly conduct. Sarac was then accused of being unfit for service in the public school system because of his conduct on the beach, the criminal proceedings against him, and Bower's testimony that Sarac admitted to "a homosexual problem since he was 20 years old and that the last time he had had sexual relations with a man was approximately 3 weeks earlier."

The state board of education revoked Sarac's secondary school teaching credential. Sarac went to court to compel the board to rescind its revocation. He argued that the board had acted unconstitutionally in revoking his teaching credential "because it failed to establish any rational connection between the homosexual conduct on the beach . . . and immorality and unprofessional conduct as a teacher on his part and his unfitness for service in the public schools."

The court, however, did not find Sarac's argument persuasive. Thus, Justice Cobey wrote:

Homosexual behavior has long been contrary and abhorrent to the social mores and moral standards of the people of California as it has been since antiquity to those of many other peoples. It is clearly, therefore, immoral conduct within the meaning of the Education Code (Id. at 72).

Furthermore, homosexual behavior constitutes "evident unfitness for service in the public school system."

In view of Sarac's duty to teach his students the principles of morality and his necessarily close association with children, the court found "a rational connection between his homosexual conduct on the beach and the consequent action of respondent [Board of Education] in revoking his secondary teaching credential on the statutory grounds of immoral and unprofessional conduct and evident unfitness for service in the public school system of this State" (Id. at 72-73). Accordingly, the court refused to rescind the action of the board of education that revoked Sarac's right to teach.

Morrison v. State Board of Education, 461 P. 2d 375 (Cal. 1969).

Marc Morrison was another California teacher who engaged in homosexual activity that became public and resulted in the revocation of his teaching credentials. Morrison also took his case to court, but for him the results were different than for Sarac.

Morrison had been a public school teacher for a number

of years before becoming friendly with Fred Schneringer, another teacher. As a result of this friendship, the two men engaged in a physical homosexual relationship during a one-week period. Approximately 12 months later Schneringer reported the incident to Morrison's superintendent; this led Morrison to resign. More than a year later the board of education conducted a hearing concerning the possible revocation of Morrison's life diploma, which qualified him as a secondary school teacher in California. Morrison admitted that he had engaged in homosexual acts with Schneringer in his apartment. He also stated that he did not regard his conduct as immoral. He testified, however, that he had engaged in no other homosexual acts before or after this single incident. There was no evidence presented to contradict Morrison's testimony. The board concluded that the incident with Schneringer constituted immoral and unprofessional conduct that warranted revocation of Morrison's life diploma. But Morrison went to court to set aside the board's action.

The board used the following arguments to support its action: some were based on the Sarac opinion.<sup>9</sup>

A teacher stands "in loco parentis". His students look up to him as the person taking the place of their parents during school hours and as an example of good conduct.

State law requires all teachers "to endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, and patriotism."<sup>10</sup>

Morrison was a potential danger to his students not only because of his immoral acts, which he admitted, but also because he did not regard such acts as immoral.

California law provides that the board of education shall revoke life diplomas and teaching credentials for immoral or unprofessional conduct.

Homosexual behavior is contrary to the moral standards of the people of California. It also constitutes unprofessional conduct, which need not be limited to classroom misconduct or misconduct with children.

Despite the arguments of the board of education, a majority of the California Supreme Court ruled in favor of Morrison for the following reasons:<sup>12</sup>

It is dangerous to allow the terms "immoral" and "unprofessional" to be broadly interpreted. To many people, "immoral conduct" includes laziness, gluttony, selfishness, and cowardice. To others, "unprofessional conduct" for teachers includes signing petitions, opposing majority opinions, and drinking alcoholic beverages. Therefore, unless these terms are carefully and narrowly interpreted, they could be applied to most teachers in the state.

The board of education should not be empowered to dismiss any teacher whose personal, private conduct incurs its disapproval. A teacher's behavior should disqualify him only when it is clearly related to his effectiveness in his job. When his job as a teacher is not affected, his private behavior is his own business and should not form a basis for discipline.

The court therefore stated that the board could not abstractly characterize Morrison's conduct in this case as "immoral" or "unprofessional" unless that conduct implies that he is unfit to teach. Then, how can a board of education determine whether a teacher's behavior indicates

his fitness to teach? In making this determination the court suggested that the board consider the circumstances surrounding the case.

In this instance there was no evidence to show that Morrison's conduct had affected his performance as a teacher. "There was not the slightest suggestion that he had ever attempted, sought or ever considered any form of physical or otherwise improper relationship with any student. Furthermore, there was no evidence that Morrison failed to teach his students the principles of morality required by law or that the incident with Schneringer affected his relationship with his co-workers."

For a school board to conclude that a teacher's retention in the profession presents a danger to students or fellow teachers, its conclusion must be supported by evidence. In this case the court ruled that the board had not presented adequate evidence to support its decision to revoke Morrison's life diploma.

The board relied heavily on Sarac and argued that its reasoning should apply to Morrison. But most of the justices disagreed. Thus, Justice Tobriner wrote on behalf of the majority, "The facts in Sarac are clearly distinguishable from the instant case; the teacher disciplined in that case had pleaded guilty to a criminal charge or disorderly conduct arising from his homosexual advances toward a police officer at a public beach; and the

teacher admitted a recent history of homosexual activities."<sup>13</sup> This was not the case with Morrison.

The California Supreme Court recognized, however, that some of the language in the opinion of the court of appeals in Sarac seemed to indicate that any homosexual conduct on the part of a teacher could result in disciplinary action. If this were true, the Sarac opinion would be in conflict with the court's decision in this case. To avoid confusion, the California Supreme Court disapproved part of the Sarac ruling. Thus, Justice Tobriner wrote that the Sarac decision "includes unnecessarily broad language suggestive that all homosexual conduct, even though not shown to relate to fitness to teach, warrants disciplinary action." The proper construction of the Education Code, however, is more restricted than is indicated by the Sarac opinion, and "to the extent that Sarac conflicts with this opinion it must be disapproved."<sup>14</sup>

In summary, the California Supreme Court's decision does not mean that homosexuals must be permitted to teach in the public schools. It does mean that the California Board of Education can revoke a life diploma or teaching certificate only if that individual has shown himself to be unfit to teach. The court concluded:

An individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.<sup>15</sup>

Odorizzi v. Bloomfield School Dist., 246 Cal. App. (2d) 123, 54 Cal. Rptr. 533 (1966).

The mere allegation of immorality or poor behavior, or even a "forced admission" of immorality may not be sufficient cause for lawful dismissal of a teacher. As shown in this case, action was taken against a school board by a teacher for rescission of his resignation submitted after he had been arrested on criminal charges of homosexual activity. The charges were subsequently dismissed because the court concluded that, in upholding the teacher, his apparent consent to the charges had been obtained through the use of undue influence. Representatives of the school board had advised him that "if he didn't resign at once the school district would suspend and dismiss him from his position and publicize the proceedings, but if he did resign the incident wouldn't jeopardize his chances of securing a teaching post elsewhere."

#### Sexual Misconduct Other Than Homosexuality

A teacher's illicit behavior is not generally cause for dismissal if the teacher's reputation is not tarnished sufficiently to cause public resentment and disapproval. If, however, a teacher's sexual conduct, in or out of the school, is such that it establishes harmful teacher-student relations, a school board would likely be upheld by the courts if the offending teacher were dismissed. Mere suspicion of sexual misconduct is not justification for

termination of a teacher's contract. Actual facts are necessary.

Lombardo v. Board of Education of School Dist. No. 27, 100 Ill App(2d) 108, 241 N.E. (2d) 495 (1968).

In this Illinois case a 14-year-old girl testified that her band instructor had molested her on several occasions. Although the teacher vehemently denied the charges in a display of emotional instability, the appellate court of Illinois upheld the dismissal of the teacher after finding it was "correct and in no wise arbitrary or capricious."

Moore v. Knowles, 333 F. Supp. 53 (N.D. Tex. 1971).

The plaintiff, H. L. Moore, brought an action against the superintendent and members of the board of education of Borger (Texas) Independent School District in connection with his suspension with pay early in 1970 after certain eighth-grade female students charged Moore with improprieties of a sexual nature which eventually led to his indictment for statutory rape, aggravated assault of a minor, and other related offenses. Moore was not provided a formal evidentiary hearing in connection with the charge. The board did permit the attorney for the plaintiff to discuss the issue with the school board's attorney. A principal-teacher conference was also provided, under a procedure provided by the rules of the manual of policies of the school district. Moore was a nontenured teacher. As a result of the above procedure, but before Moore was convicted of any of the charges, the board of education



voted to suspend Moore with pay, pending a full investigation by the school administration and further consideration of the matter by the board. The testimony was to the effect that the suspension was based solely upon the criminal indictments pending against the plaintiff. Moore filed an action in the federal district court and sought a declaratory judgment, to the effect that he had been denied due process. He asked also for an injunction ordering his reinstatement as a teacher and for attorney's fees.

The trial court found that Moore had a "reasonable expectancy of continued employment" and that by its inaction after a failure on the part of the courts to proceed further with the criminal charges against Moore, the board had not accorded him procedural due process. As a result, the district court ordered the board to pay Moore an amount equal to his 1969-70 salary, plus increment for the 1970-71 school year, plus \$5,000 in attorney's fees.

#### ALCOHOL AND DRUGS

With problems of alcohol and drug abuse among school children becoming more prominent during the late 1960s and early 1970s, one might expect the courts to view teacher conduct involving alcohol and drugs in the same light as sexual conduct between teacher and student. However, as the case law has developed, the argument that proof of the conduct provides the needed evidence of unfitness has been rejected.

Watson v. State Board of Education, 99 Cal. Rptr. 468 (1971).

The Watson case applied the Morrison principles to public drunkenness.

Although the teacher, Watson, in this case was not discharged per se, nor charged with immorality, he was refused a secondary life diploma by the state due to several arrests for drunken driving over a ten-year period. Each arrest constituted moral turpitude under California law.

Watson was a teacher in the public schools of California. In March of 1969, he applied to the Committee of Credentials, Department of Education, for a life diploma. The hearing officer recommended that his application be granted for a life certificate, although six separate offenses and arrests for intoxication were submitted in evidence at the hearing. While the matter was pending before the state board, however, Watson was again arrested for drunken driving. A second hearing was held and his application was denied.

Watson sought a writ of mandate to compel the state board to set aside its refusal to grant him a life diploma. The California Court of Appeal affirmed the actions of the State Board of Education.

Watson based his argument before the court on Morrison v. State Board of Education, contending that his diploma could not be denied unless he was unfit to teach and the

evidence was not sufficient to prove "unfitness to teach".

The court was not impressed. It stated: "We do not construe Morrison as establishing the broad principle for which appellant argues." (Id. at 469). The court continued to distinguish between Morrison and Watson. In Watson the acts were public. They were current, and they indicated a potential for continued misconduct.

Presiding Justice Lillie summed up the position of the court with the following statement:

Perhaps of greater concern in this day when various forces in our society encourage disrespect for discipline and authority and disregard for law and order, the petitioner's criminal convictions which in the judge's opinion clearly indicate and speak for themselves that this man is unfit to teach and work with young people . . . I don't know what better evidence there could be of immorality than a series of criminal convictions. . . It would seem that even minimum responsible conduct on the part of a teacher necessarily excludes a consistent course of law violations and convictions which can do no less than give the students a bad example of proper respect for law and authority. The teaching by example as well as precept, of obedience to properly constituted authority and discipline necessary to a well ordered society is an important part of education. (Id. at 472).

Johnson v. Board of Education, 101 Ariz. 268, 419 P.2d 52 (1966).

In this 1966 Arizona case, a teacher was arrested on charges of being drunk and disorderly and committing lewd and lascivious acts. The court ruled that the board acted arbitrarily in dismissing the teacher after both charges had been dismissed by the magistrate. The record showed that the teacher had an excellent character. The court stated

that since this incident was the only "blot on his record," there was not good cause for the dismissal.

Governing Board of Nicasco School District v. Brennan, 95 Cal. Rptr. 712, (Ct. App. 1971).

In 1971 a California appellate court upheld the dismissal of a teacher who executed an affidavit telling of her "long and beneficial use of marijuana." The charge against the teacher by the board was immoral conduct. While the court agreed that the questioned conduct must indicate unfitness to teach, citing Morrison and other decisions, it rejected the teacher's argument that such a nexus was not established. The court pointed out that the affidavit received wide publicity not only locally in the press, radio and television, but also nationally. Furthermore, the court reasoned that it could have been anticipated that children and their parents would learn of it. Acknowledging that no evidence had been submitted concerning the affidavit's effect on students,<sup>16</sup> the court declared that there must be competent evidence of such deleterious effects. This evidence the court found in the testimony of the district superintendent who said that students were likely to follow the teacher's example.

#### SUMMARY

Nineteen court cases on teacher dismissals for immorality during the period of 1966 through 1971 were presented in this chapter. These cases were selected to

represent the particular time period and to illustrate the scope of teacher conduct considered immoral by the courts. Such conduct included drinking in public, using profanity in the classroom, concealment of facts, vulgarity, and criticism of superintendent and board. All cases demonstrated that teachers were expected to exemplify high standards of public and private moral conduct as a condition of continued employment. The language of the courts during this period demonstrated frequently recurring phrases that convey key concepts held by the judiciary. Such phrases included "conduct should not arouse suspicion", "moral standards of the community", "to conduct himself in such a way as to command the respect and good will of the community", ". . . though this may deprive the teacher of the freedom of action enjoyed by others."

Beginning in 1967 with Jarvella and followed by Morrison in 1969, the language of the courts showed a change in stance. The court language from 1969 on was characterized by such key concepts as, "a right to privacy", act must demonstrate "unfitness for service", "potential for misconduct", "void for vagueness", "must adversely affect teacher-student relationship", "sufficient evidence of unfitness", "protected by the First Amendment", and "a rational nexus . . ."

There was a perceptible shift in judicial direction after 1967-69, characterized by a shift toward protection of

individual rights with a corresponding decrease in concern for community moral standards. Now, a violation of community standards, or conduct offensive to the morals of the community, would not, in and of itself, stand up in court as a basis for teacher dismissal. Such conduct must adversely affect the teacher-student relationship and the teacher's effectiveness on the job.

None of the courts has ruled a teacher cannot be dismissed or that immoral conduct has to be condoned. They merely stressed the necessity of proving a relationship between teacher immorality and dysfunctional consequences in the school setting. Additionally, courts have recognized a teacher's right to a private life, to procedural due process, and to the right of dissent.

Analysis of the cases shows considerable disagreement over the interpretation of immorality. But one thing emerges clearly from case analysis: whatever ground is chosen as a charge for dismissal after Morrison, "evident unfitness for service" has to be proved by the discharging board before a dismissal can stand judicial scrutiny.

Chapter IV contains information obtained from case study that was litigated during the time period of 1981 through 1986 pertaining to the topic of teacher dismissal due to immorality.

## NOTES

<sup>1</sup> Floyd G. Delon, Legal Control on Teacher Conduct: Teacher Discipline (Topeka, Kansas: National Organization on Legal Problems of Education, 1977), 8.

<sup>2</sup> State v. Truby, 211 La. 178, 29 So. 2d 758 at 765 (1947).

<sup>3</sup> Hobson v. Hansen, 269 F. Supp. 401 (D. D. C. 1967).

<sup>4</sup> Horosko v. School District of Mt. Pleasant Township, 335 Pa. 369, 6 A. 2d 866 (1939).

<sup>5</sup> Beilan v. Board of Education, 357 U. S. 399 (1958).

<sup>6</sup> Id. at 358.

<sup>7</sup> Morrison v. State Board of Education, 1 Cal. 3d 214, 461, P. 2d 375, 81 Cal. Rptr. 175 (1969).

<sup>8</sup> Louis Fischer, David Schimmel, and Cynthia Kelly, Teachers and the Law (New York: Longman, Inc., 1981), 230.

<sup>9</sup> Arguments in support of the decision of the board of education are also taken from the dissenting opinion of Judge Sullivan, supra note 7 at 240.

<sup>10</sup> Education Code, Section 13556.5 Id. at 247.

<sup>11</sup> Education Code, Section 13202, provides; "The State Board of Education shall revoke or suspend for immoral or unprofessional conduct . . . or for evident unfitness for service life diplomas, documents or credentials." Id. at 218.

<sup>12</sup> These arguments are taken from the opinion of the

court written by Judge Tobriner, Id. at 217-218.

<sup>13</sup> Id. at 238.

<sup>14</sup> Id.

<sup>15</sup> Id. at 235.

<sup>16</sup> The court observed that Morrison does not indicate that the student body must be examined to determine the effect of the incident.



## CHAPTER IV

### REVIEW OF COURT CASES FROM 1981 TO 1986

Chapter III contained a review of state and federal court cases on teacher dismissal for immorality decided during the five-year period from 1966 to 1971. The 1970's saw teachers with much greater frequency challenging their dismissal for immoral and/or personal conduct as alleged violations of constitutional and civil rights. Many teachers began to resist encroachment into their private lives.

Chapter IV will contain a review of court opinions litigated from 1981 to 1986 on teacher dismissal for immorality. Times have changed since 1971 and school boards are not as disposed as they were several decades ago to restrict the private life of a teacher.

### INTRODUCTION AND OVERVIEW

Today's teachers have a new professional image. Laws and court decisions have given teachers more protection from arbitrary community harassment. Strong organizations have worked to uphold the rights of individual teachers.

The number of lawsuits, according to court reports, involving teacher dismissal for immorality during the 1981 to 1986 period of time increased considerably over the 1966-71 period. Cases for examination were selected according to three criteria: (1) the case must have been

based on immorality as the primary cause for dismissal; (2) the case must have been decided during the years of 1981 to 1986; and (3) the cases selected must have demonstrated the breadth of immorality in teacher dismissals.

An increasing number of courts now hold that teachers cannot be dismissed for personal conduct simply because it is contrary to the mores of a community. Thus the fact that a teacher has done something many people regard as immoral (e.g., smoking marijuana, committing adultery, engaging in homosexual activity, or using vulgar language) is not by itself sufficient grounds for dismissal. Before a teacher can be dismissed on such grounds, there must first be substantial evidence that the immorality did have or is likely to have a negative effect on his or her teaching. As long as a teacher's competence is unaffected, most courts hold that a teacher's private behavior is not subject to supervision or sanction by school officials. In addition, some judges apply the new constitutional "right to privacy" to protect teachers' personal behavior.

On the other hand, courts usually uphold the dismissal of teachers whose immoral conduct becomes known through their own fault and, as a result, has a negative impact on their teaching effectiveness. They may be suspended because of a criminal indictment if the alleged crime relates to their job; but they may not be dismissed simply because of a serious criminal charge if they are not guilty. In cases of

notoriously illegal or immoral behavior, some courts have upheld teachers being fired even without evidence that the conduct impaired their teaching. For example, in cases involving repeated convictions for drunk driving, armed assault, shoplifting, or illegal drug use, some judges rule that the negative impact of such behavior is obvious. Whether being known as a homosexual, being an unwed mother, or committing a crime could result in dismissal probably would depend on the circumstances. Courts might consider the size, the sophistication, and the values of the community; the notoriety of the activity; the reaction of the students and parents; when the conduct took place; whether it occurred in the community where the teacher is employed; and its impact on other teachers.

### THE IMMORALITY CASES

#### General Immorality

The nexus issue appeared in cases in which teacher dismissal resulted from various forms of misconduct. These offenses included pregnancy out of wedlock, cohabitation, making improper racial remarks, lying and cheating, and theft.

Pregnancy Out of Wedlock. Avery v. Homewood City Board of Education, 674 F.2d 337 (5th Cir. 1982).

This 1982 decision involved Jean Avery, a remedial reading teacher, who was fired for "immorality" for being pregnant out of wedlock, and "insubordination" and "neglect

of duty" for violating a rule requiring teachers to notify administrators of their pregnancy by the fourth month. In cases of "mixed-motive discharge" such as this, the burden is first on the teacher to show that her conduct was "constitutionally protected and was a substantial or motivating factor in the Board's decision to discharge her." Avery sustained this burden, and the court ruled that "out of wedlock pregnancy was constitutionally protected."<sup>1</sup> Having "carried her initial burden," it was then up to the school board to prove by a preponderance of the evidence that it would have discharged Avery even in the absence of her pregnancy. But the board failed to do this, since it presented no evidence that it would have dismissed Avery for violating the notice rule if she had been married. Therefore, the court concluded that Avery's discharge violated her rights under the equal protection clause of the fourteenth amendment.

Cohabitation. Sherburne v. School Board of Suwannee County, 455 So.2d 1057 (Fla. App. 1984).

This case involved a high school teacher of Spanish who was dismissed because she lived with a boyfriend for a month and later spent the night with him on occasion. The school board alleged that such cohabitation showed that the teacher lacked good judgment and that she failed "to conform to the moral standards established by the vast majority of teachers" in the county, and that such conduct "reduces her effectiveness."<sup>2</sup> Despite these allegations, there was no

evidence that the cohabitation did in fact reduce her effectiveness, and there was substantial testimony that she was an excellent teacher. Moreover, there was no evidence that her relationships were common knowledge until the matter was publicized by the board. Under these circumstances, the court ruled that the private sexual relationships of a teacher are not "good cause" for termination "unless it is shown that such conduct adversely affects the ability to teach."

Racial Remarks. Clarke v. Board of Education of the School District of Omaha, 338 N.W.2d 272 (Neb. 1983)

In Omaha, Nebraska, a teacher was fired for calling black students "dumb niggers" in a racially mixed class. According to the state supreme court, it is as immoral for teachers to use such language (which is "humiliating, painful, and harmful") as it is to teach students to cheat. "There may have been a time," wrote the court, when it was thought appropriate to "refer to each other as 'kikes' or 'wops' or 'shanty Irish' or 'niggers.'" But, "thankfully we have overcome that disgrace. And those who insist on making such words a part of their vocabulary must be labeled by the public as immoral."<sup>3</sup>

Lying and Cheating. Florian v. Highland Local School District Board of Education, 570 F.Supp. 1358 (N.D. Ohio 1983).

In Ohio, a counselor who was also a wrestling coach was dismissed for telling a student to lie about his weight during a wrestling tournament. As a result, he resigned as

coach, but argued that this conduct should not affect his position as guidance counselor. The court disagreed. It ruled that telling a student to lie and cheat constituted immorality that related directly to his performance as a teacher.

Poor Judgment. Schmidt v. Board of Education of Raytown Consolidated School District No. 2. 712 S.W.2d 45 (Mo.App. 1986).

Two teachers at a Missouri high school were dismissed for allegedly engaging in immoral conduct. The teachers had taken six male students to the state wrestling meet in Columbia, Missouri. Four female students chaperoned by the mother of one of the students also attended. About 1:30 a.m. on one of the nights in Columbia, the female chaperone decided not to take the female students back to their separate motel because it was late, the weather was bad, and she had been drinking. Although no effort was made to segregate the sexes into two rooms, no one was unclothed and there was no evidence of sexual misconduct. The next day, everyone agreed not to discuss the activities of the previous evening with anyone including parents or school administrators.

One month later, after the teachers' supervisor learned of the incident, investigations were begun which eventually led to the teachers' dismissals by the board of education. When the teachers appealed the discharge to a state circuit court, the court affirmed the action of the board.

On appeal to the Missouri Court of Appeals, the teachers contended that the board's determination that "immoral conduct rendered [them] unfit to teach . . ." was unsupported by competent evidence, was arbitrary and capricious and involved an abuse of the board's discretion. The court observed that its role was not to weigh the evidence and decide the merits of the case but to determine whether there was enough substantial competent evidence to support the decision of the board. After reviewing the testimony of the board hearing, however, the court ruled that the evidence was sufficient to support the teachers' termination. The decision of the lower court and the board of education was upheld.

Shoplifting. Golden v. Board of Education of the County of Harrison, 285 S.E.2d 665 (W. Va. 1981).

Is shoplifting sufficient ground for teacher dismissal? Judges differ on this issue. Some believe conviction for shoplifting is a sufficient basis for dismissal; others hold that schools must prove that the crime impairs teacher effectiveness. A case illustrating this conflict involved Arlene Golden, a West Virginia guidance counselor, who was fined \$100 for shoplifting at a local mall. Although there were mitigating circumstances indicating that the counselor was "totally distraught" at the time, the board dismissed her, believing that her conviction constituted immoral conduct. But the West Virginia Supreme Court ruled in Golden's favor because there was no evidence that the

counselor's conviction had any relationship to her professional effectiveness. Since the only competent evidence was favorable to Golden, the court ruled that the board could not conclude she was unfit as a counselor.

In a strong dissenting opinion that reflected the views of other courts, Judge Neely wrote: "What type of example does a confessed shoplifter set for impressionable teenagers? . . . I can hear the dialogue now in the guidance office of this particular counselor: 'Say, Miss Golden, do you know a good fence for some clean, hot jewelry?' . . . The result in this case is absurd." Id. (1982).

Criminal Conduct. Hoagland v. Mount Vernon School District No. 320, 623 P.2d 1156 (Wash. 1981).

Usually, a teacher who is convicted of a serious crime, such as a felony, can be dismissed. On the other hand, a Washington court pointed out that not all felonies involve immoral behavior or crimes of such seriousness that by themselves would be sufficient to justify dismissing a teacher. This view was endorsed in a case involving a teacher who was fired after being convicted of grand larceny for purchasing a stolen motorcycle. The court ruled that a teacher could not be dismissed unless the school district shows that his criminal conduct "materially and substantially" affects his teaching. According to the court, "simply labeling an instructor as a convicted felon will not justify a discharge."<sup>4</sup> This is especially true in this case, where the teacher might not have known the



motorcycle was stolen when he bought it, where he received support from students, parents, and other teachers, and where the conviction had no adverse affect on his teaching.

Larceny or Theft. Kenai Peninsula Borough Board of Education v. Brown, 691 P.2d 1034 (Alaska 1984).

Does conviction for a misdemeanor justify dismissal? Not usually. But it may if the misdemeanor conviction constitutes a crime of moral turpitude. For example, in Alaska, a tenured teacher was dismissed after being convicted of illegally diverting electricity from the power company to his home. The board characterized the teacher's crime as a "form of larceny or theft . . . involving moral turpitude."<sup>5</sup> The Alaska Supreme Court agreed. The court wrote: "The legislature, in enacting certain criminal statutes, has established minimum acceptable moral standards for the state as a whole. If a teacher cannot abide by these standards, his or her fitness as a teacher is necessarily called into question."

Theft. Kimble v. Worth County R-111 Board of Education, 669 S.W.2d 949 (Mo.App. 1984).

Can a teacher be fired for taking school property of relatively little value? Yes, even if the property is later returned. In 1984 a Missouri court upheld the dismissal of a tenured teacher-librarian who, during an eight-year period, took the following property from the school: a teapot, \$20 from baseball gate receipts, and a set of books. The court explained: "The taking of property belonging to

another without consent, notwithstanding its return when confronted with such wrongdoing, breaches even the most relaxed standards of acceptable human behavior, particularly so with regard to those who occupy positions which bring them in close, daily contact with young persons of an impressionable age."

### HOMOSEXUALITY

"Homosexuality" means sexual desire or behavior directed toward a person or persons of one's own sex.<sup>6</sup> The practice has been in existence for centuries without judicial disapproval. Only in recent years, however, has it constituted a litigious issue as applied to school teachers.<sup>7</sup> In general, the courts are in agreement that "homosexuality," in itself, does not constitute "immorality" and is therefore not just cause for the dismissal of a teacher.

Rowland v. Mad River Local School District, Montgomery County, Ohio, 730 F.2d 444 (6th Cir. 1984).

In Rowland, the court considered whether a guidance counselor's communication to teachers and administrative personnel of her sexual preferences was made by her as an employee upon a matter of personal interest or as a citizen on a matter of public concern. The plaintiff in Rowland was a nontenured vocational guidance counselor. Ms. Rowland told employees of the district that two of her students were homosexual and that she was bisexual. When her principal found out, he asked her to resign. Ms. Rowland refused to

resign and told other teachers that she had been asked to resign because she was bisexual. After the plaintiff refused a second time to resign, she was suspended with full pay for the remainder of her contract term. The plaintiff obtained a preliminary injunction against her suspension and she was reassigned to a position which had no student contact. In the spring of that year, Ms. Rowland was notified that her contract would not be renewed for the next school year. The plaintiff filed suit alleging that her suspension, reassignment and ultimate nonrenewal were in violation of her first amendment right to free speech. The lower court held for the teacher and the district appealed.

In reversing the lower court, the court of appeals held that under the Connick<sup>8</sup> test Ms. Rowland's statements were not protected speech since she spoke out only in her personal interest. The court further held:

There was absolutely no evidence of any public concern in the community or at Stebbins High with the issue of bisexuality among school personnel when she began speaking to others about her sexual preference.

Thus, Ms. Rowland's own treatment of the issue of her sexual preference indicated that she recognized that the matter was not one of public concern. Her statements, like those of the plaintiff in Connick were made as part of an individual effort to avoid unfavorable action by her employer (Id. at 449).

Since courts have interpreted the decision of Connick as limiting the application of the first amendment to speech-related activities of public employees, it will be

incumbent upon an employee who asserts that he or she has been retaliated against in violation of the first amendment, to convince the court that statements made about the teacher's sexual preference were a matter of public concern. In other words, if the focus of a teacher's complaint is solely on the interests of that particular teacher rather than on a public concern in the community with the issue of homosexuality, the teacher's speech will not be protected.<sup>9</sup> Lang v. Lee, 639 S.W.2d 111 (Mo. Ct. App. 1982).

A Missouri teacher's dismissal for immoral conduct was sustained after the board heard evidence that the male teacher had engaged in relationships and homosexual contacts with young males between the ages of thirteen and twenty-one. The issue on appeal was whether the permanent teacher's due process rights were infringed by the school board's decision to proceed with a hearing before criminal charges were resolved. The teacher refused to appear to testify at his dismissal hearing due to the pendency of the criminal proceedings. The appellate court favorably weighed the strong interest the school board had in determining whether the teacher was guilty of immoral conduct in concluding that there was no denial of due process.

Ross v. Springfield School District No. 1, 691 P.2d 509 (Ore. App. 1984).

A 1984 Oregon decision upheld the dismissal of a teacher for homosexual conduct that was observed by undercover police in the rear of an adult bookstore.

According to the judge, engaging in sexual activity in a public place violates contemporary moral standards; and once the behavior became known among the parents of his pupils, "his ability to function as a teacher was severely impaired." In short, the court found that the teacher's public immoral behavior, combined with community knowledge and parental complaints, justified his dismissal.

National Gay Task Force v. Board of Education of Oklahoma City, 729 F.2d 1270 (10th Cir. 1984).

In Oklahoma, a law was passed permitting teachers to be dismissed for public homosexual "conduct" or "activity." In 1984 a federal appeals court upheld part of the law, punishing homosexual "activity" that is "indiscreet and not practiced in private."<sup>10</sup> But the prohibition against homosexual "conduct" was unconstitutional since it defined such conduct to include "advocating" or "promoting" homosexual activity in a way that could come to the attention of school children or employees. Thus a teacher could violate the law by appearing on television or before the legislature to urge repeal of an antisodomy statute. However, firing teachers for advocating legal or social change violates the first amendment. Therefore, such restrictions on teachers' rights are permitted only if the state proves they are "necessary" to prevent disruption or insure effective teaching, and the state proved neither.

SEXUAL MISCONDUCT OTHER THAN HOMOSEXUALITY

Sexual misconduct with students may not be engaged in by teachers, and such misconduct justifies removal of the teacher from the classroom. No other category of conduct used as a basis for immorality dismissals has generated such unanimous disapproval in court decisions as sexual misconduct by a teacher with students.<sup>11</sup>

Sexual Misconduct with Students. Clark v. Ann Arbor School District, 344 N.W.2d 48 (Mich. App. 1983).

In 1983, a Michigan appeals court upheld the firing of a tenured teacher because of an "unprofessional relationship" with one of her 17-year-old high school students. She had been warned to avoid "the appearance of impropriety" with male students, but the teacher visited the student's apartment several times (one time over night), and allowed him to drive her car without a license. Although there was no proof that the teacher's conduct had an adverse effect on other students or teachers, the court ruled that her dismissal was supported by "competent, material, and substantial evidence."<sup>12</sup>

Board of Education of Tonica Community High School District No. 360 v. Sickley, 479 N.E.2d 1142 (Ill. App. 1985).

An Illinois court ruled in favor of a guidance counselor who was dismissed for hugging and stroking a fifth-grade girl and letting her sit on his knee. Experts disagreed about the wisdom of the counselor's professional conduct. A state court ruled, however, that in this case it was not immoral for the counselor "to hug or stroke a

crying, distraught ten-year-old child" or to permit her to sit on his knee "while they discussed her school work and her family situation."<sup>13</sup>

Jenkins v. State Board of Education, 339 So.2d 103 (Fla. Dist. Ct. App. 1981).

A Florida teacher's certificate was initially suspended where a police report provided evidence to establish that the teacher, clad only in trousers and socks, was found with a female student in the backseat of his car. In reversing, the Florida court ruled that the evidence of impropriety was not sufficient to justify suspension.

Potter v. Kalama Public School District, 644 P.2d 1229 (Wash. Ct. App. 1982).

Following repeated incidents of touching and stroking females in his fourth grade class, a Washington teacher was admonished and placed on probation during the following year. In that year parental complaints were investigated by the school principal. The teacher's inappropriate physical contact with female students was found to have reoccurred regularly. Following discharge, the teacher sought appellate review on the ground that he had not been afforded a program to correct remediable deficiencies. In reviewing the statute requiring evaluation, notice and an opportunity to remediate, the court of appeals found the remediation statute not to be applicable to the teacher's conduct. Only deficiencies in conduct which have an educational aspect or legitimate professional purpose such as classroom

management, subject matter, knowledge or handling of student discipline, would be deemed remedial. The teacher's dismissal was affirmed.

Lile v. Hancock Place School District, 701 S.W.2d 500 (Mo. App. 1985).

The Missouri Court of Appeals is the only court to date to have required the evaluation of several factors to determine if a teacher's improper physical conduct with students rendered him unfit to teach.<sup>14</sup> The Lile case is also unique in that the female students involved and their mother were living with the teacher at the time of the misconduct. When their mother was hospitalized and the girls went to live with their father, the father brought criminal charges against the teacher. The teacher and the girls' mother steadfastly maintained the propriety of the conduct.

Lile regularly entered the bathroom in his home and used the bathroom in the presence of the two young girls (age nine and thirteen at the time of the hearing); he took a photograph of the girls while they were naked in the bathtub; he slept naked in the same bed with the girls while their mother was in the hospital; he walked around the house naked in the presence of the girls; he took baths with the girls; and he called the girls by nicknames that referred to the color of their pubic hair. The court considered the following factors to determine if the conduct rendered Lile unfit to teach:



(1) The age and maturity of the students of the teacher involved; (2) the likelihood that the teacher's conduct will have adversely affected students or other teachers; (3) the degree of the anticipated adversity; (4) the proximity or remoteness in time of the conduct; (5) extenuating or aggravating circumstances surrounding the conduct; (6) the likelihood that the conduct may be repeated. . . . (Id. at 505).

Applying the factors, the court stated:

We hold that the Board, considering the evidence before it, properly terminated Lile's contract. First, the age and maturity of lile's fourth grade students rendered them particularly susceptible to psychological harm. It is also likely that Lile's conduct would have a substantial adverse impact upon students and other teachers, given that the sexual abuse charge stemming from such conduct had been locally publicized. Moreover, the circumstances surrounding the conduct were aggravated because the conduct involved children of approximately the same ages as Lile's students. The conduct at issue did not cease until shortly before his suspension, and this proximity in time further impaired Lile's fitness to teach. Finally, Lile remains likely to repeat such conduct in the future, given that his conduct was not an isolated aberrational event, but rather occurred repeatedly for more than two years (Id. at 506).

Fadler v. Illinois State Board of Education, 506 N.E.2d 640 (Ill. App. 5th Dist. 1987).

A tenured third grade teacher was dismissed by his school board on the bases of two allegations that he had fondled female students. The teacher was dismissed without written warning, and he filed a lawsuit seeking reappointment. The Appellate Court of Illinois ruled that the teacher's conduct was immoral and irremediable under Illinois statutes. The court noted that the teacher could therefore be dismissed without written warning. The

teacher's conduct was irremediable because (1) it caused damage to the students and to the school, and (2) its damaging effects could not have been corrected by written warning. A test for remediability based on whether a written warning would cause the teacher to refrain from fondling students in the future was not appropriate. "The more appropriate focus is not whether the conduct itself could have been corrected by a warning but whether the effects of the conduct could have been corrected."<sup>15</sup> The court affirmed his dismissal.

Keating v. Riverside Board of School Directors, 513 A.2d 547 (Pa. Cmwlth. 1986)

The Commonwealth Court of Pennsylvania affirmed a decision of the State Secretary of Education and the board of directors of a school district to dismiss a male teacher because of his attempts to engage in a romantic relationship with a student. His overtures, unreturned by the student, included gifts of clothing and blackboard love notes. At a school board hearing the teacher did not deny the allegations and was dismissed for incompetency, immorality and willful and constant violations of school laws. On appeal, the teacher contended that the charge of immorality was unfounded. The Commonwealth Court concluded that the teacher's persistent pursuit of the sixteen-year-old student constituted a legitimate cause for dismissing him for immorality. The court observed that society's interest in the social welfare of its youth outweighs the teacher's

private interest of employment as a teacher. The decision of the Secretary of Education and the local board to dismiss the teacher was upheld.

Katz v. Ambach, 472 N.Y.S.2d 492 (App. Div. 1984).

In this 1984 New York case, the court approved the discharge of a teacher for "intolerable behavior" that included kissing the girls in his sixth-grade class, patting them "on the behind," and permitting obscene jokes and profanity in his classroom.

Ross v. Robb, 662 S.W.2d 257 (Mo. 1983).

In this 1983 decision of the Missouri Supreme Court, the justices upheld the dismissal of a building trades teacher for immoral conduct because he permitted male students to "engage in sexual harassment" of the only female student by repeatedly using obscene and sexually explicit language toward her, by displaying a "suggestive centerfold," and by using a plastic phallus to embarrass her.

#### ALCOHOL AND DRUGS

Generally, courts have upheld the dismissal of teachers if their immoral conduct becomes known through the teacher's fault and has a negative impact on the teacher's effectiveness. Examples include publicly admitting to frequent drug and alcohol use. However, in cases of notoriously illegal or moral behavior, some courts allow teachers to be dismissed even without evidence that the

conduct impaired their teaching. In cases such as repeated convictions for drunken driving or illegal drug activity, judges may say that the negative impact of such behavior is "apparent."<sup>16</sup>

Alcohol. Coupeville School District No. 204 v. Vivian, 677 P.2d 192 (Wash. App. 1984).

Can a teacher be dismissed for allowing students to drink at his home? Yes, especially if the drinking is excessive. Two 16-year-old students asked teacher Archie Vivian if they could play pool at his house. There, they gave Vivian a bottle of whiskey "as a Christmas gift." Although the teacher had only one drink, the girls helped themselves and finished the bottle. Vivian saw them do this and did not attempt to stop them. As a result, one of the girls became intoxicated and passed out, the incident became public, and the teacher was dismissed.

Witnesses testified that Vivian (who had not been disciplined in 23 years of teaching) could soon overcome the adverse effects of this incident. In response, the judge wrote: "No doubt, Vivian can at some time in the future regain his ability to teach"; but schools are not established to rehabilitate teachers. In upholding Vivian's dismissal, the court concluded that the district "was entitled to a teacher who would be an effective role model and teacher on the date of his discharge, not the following day, or the following month."<sup>17</sup>

Turk v. Franklin Special School District, 640 S.W.2d 218

(Tenn. 1982).

Jane Turk had been a tenured teacher in the Franklin (Tennessee) Special School District for about 10 years when, on 13 September 1980, she was arrested for driving under the influence of alcohol (DUI). She later explained that she had recently been through separation and divorce from her husband of 20 years and, on that date, had received a distressing telephone call from an old friend with a domestic problem. Turk had intended to spend the night at the friend's house; she consumed one strong vodka drink during a period of several hours. However, when it appeared that her friend's husband might return home, Turk decided to return to her own home shortly after 9 p.m. According to Turk, she had been on a crash diet and, while driving home, began to feel dizzy. She pulled off the road, but her right wheels ended up in a ditch. She remained in her vehicle until two police officers investigated the scene. Turk admitted that she had been driving under the influence of alcohol and received a suspended sentence, conditional upon her attendance at a driving school.

On 5 January 1981 James D. Brown, the Franklin superintendent of schools, read a newspaper account of Turk's arrest, conviction, and conditional sentence. The newspaper article also reported that Turk had had a serious one-car accident in 1979 but had not been charged with any violation of the law.

Brown called Turk in for a conference sometime in February of 1981 and gave her a choice between resigning her teaching position or accepting a probationary appointment while receiving counseling for what Brown assumed to be a serious alcohol problem. Turk rejected both alternatives. On 9 February 1981 Brown issued the following notice:

I charge Jane Turk, a tenured teacher in the Franklin Special School District, with conduct unbecoming a member of the teaching profession: namely driving while intoxicated on or about September 13, 1980, on a public highway in Williamson County in violation of the laws of the State of Tennessee.

In accordance with the Tennessee tenure law, Turk demanded and received a hearing before the school board; the hearing was held on 23 March 1981. At the hearing, Turk's attorney stated that she would admit that she was driving under the influence of alcohol at the time of her arrest, but that this incident occurred on a Saturday, did not involve any third parties, had no connection with her performance as a third-grade teacher, and did not constitute conduct unbecoming a member of the teaching profession of sufficient magnitude to justify dismissal. Over the objections of Turk's attorney, the attorney for the school board was allowed to offer evidence concerning Turk's 1979 accident, her absentee record, and her alleged problem with alcoholism. During the course of these proceedings, the board's attorney referred to Turk's "two DUIs." Superintendent Brown was also allowed to testify as follows:

But as I told Mrs. Turk in our second conference, any time you have two charges . . . two accidents that are directly related to a DUI, particularly with a person that is as bright, as intelligent as Jane Turk, she has got a problem. And the only way that she can deal with that problem and the only way I can help her deal with that problem is that first she has to admit she has a problem. But she was not willing to do that.

After considering all the evidence, the school board dismissed Turk from her teaching position.

Turk appealed her dismissal to the state court. The lower court judge (called a chancellor in Tennessee) reversed the school board's action of dismissal and held that there was no evidence of a substantial adverse effect on Turk's capacity and fitness as a teacher that would have justified her discharge.

The school board appealed the decision to the Tennessee Supreme court. In a unanimous decision dated 4 October 1982, the court upheld the decision of the lower court. The court concluded that it was a "fundamental error" for the school board to consider such matters as Turk's 1979 accident, her absentee record, or her alleged alcohol problem, because those charges were not specified in writing prior to the school board hearing. Tennessee law requires that, before a tenured teacher can be dismissed, "the charges shall be made in writing specifically stating the offenses which are charged." The court found that the school board "acted in flagrant disregard of the statutory requirement and fundamental fairness in considering matters

that should have been specifically charged in writing."<sup>18</sup>

Faulkner v. New Bern-Craven County Board of Education, 65 N.C. App. 483, 309 S.E.2d 548 (1983).

Similar to the Turk case, in a recent North Carolina case, the court reversed the school board's decision dismissing a teacher for neglect of duty and habitual or excessive use of alcohol. The court found that the evidence presented by the board was insufficient and held for the teacher.

Drugs. Dupree v. School Committee of Boston, 446 N.E.2d 1099 (Mass. App. 1983).

In Massachusetts, the state courts sustained the suspension of a junior high school teacher after his indictment for "possession, with intent to distribute, cocaine." There was no evidence that the teacher engaged in misconduct with school personnel or students. However, the judge reasoned that because of the teacher's position as a role model, because of the increased use of drugs among students, and because his conduct was in "direct conflict with the message his teaching should impart," school officials should have discretion to consider the cocaine indictment to be "an indictment for misconduct in office."<sup>19</sup>

Baker v. School Board of Marion County, 450 So.2d 1194 (Fla. App. 5 Dist. 1984).

In Florida, after a teacher was arrested for possession of illegal marijuana and alcohol, the charges were dropped when it was found that both illegal substances belonged to his brother. Nevertheless, the teacher was dismissed



because the school board believed his "effectiveness as a teacher has been impaired." But a state appeals court rejected this argument. "Otherwise," wrote the judge, "whenever a teacher is accused of a crime and is subsequently exonerated with no evidence being presented to tie the teacher to the crime, the school board could, nevertheless, dismiss the teacher because the attendant publicity has impaired the teacher's effectiveness." Such a rule, concluded the court, "would be improper."<sup>20</sup>

Rogliano v. Fayette County Board of Education, 347 S.E.2d 220 (W. Va. 1986).

A teacher who was dismissed from his teaching position by a school board because he was arrested for possession of marijuana in his home appealed the decision to the Supreme Court of Appeals. The higher court reasoned that the misdemeanor charge did not adversely affect the teacher's ability to function as a teacher and therefore did not warrant his dismissal. The court further reasoned that because the incident occurred in private and did not involve any students, dismissal was not required. The school board was directed to reinstate the teacher.

Nolte v. Port Huron Area School District Board of Education, 394 N.W.2d 54 (Mich. App. 1986).

A Michigan high school teacher was charged with furnishing pills to students, encouraging a student to use marijuana, helping the student obtain marijuana, and failing to report the student's use of marijuana. A school board

hearing was held at which the teacher stated that he was opposed to drug use and that he had never used marijuana. He also testified that he had previously enforced school drug and alcohol policies during a ski club trip that he chaperoned. The school board offered four student witnesses rebutting the teacher's testimony. The students testified that students used alcohol on the ski trips and that the teacher used marijuana. The school board found each of the charges to be true and the teacher's employment was terminated. The teacher then received a hearing before a State Tenure Commission hearing officer. The commission affirmed the school board's actions. The teacher then brought the case to a county circuit court charging that the commission had deprived him of due process and claiming that the students' testimony should have been disregarded as prejudicial. Disagreeing, the circuit court affirmed the teacher's termination. The teacher appealed.

The first issue addressed by the Michigan Court of Appeals was whether the Tenure Commission denied the teacher due process in affirming his termination. The teacher claimed that the commission's hearing officer improperly denied him the opportunity to review her proposed decision before it was submitted to the commission for deliberation. He also claimed that "three staff members of the Department of Education had participated in the commission's deliberations, denying him due process and a fair and

impartial hearing." The appellate court affirmed the circuit court's decision that the hearing officer had no duty to allow the teacher to review her proposed decision. It also ruled that the commission's deliberations were not prejudiced by the presence of the Department of Education staff members. A legal document submitted by one of the staff members in attendance indicated that they did not take part in the discussions.

The second issue on appeal was whether the students' testimony was "prejudicial" and should have been disregarded. The court noted that "the Commission believed the rebuttal evidence . . . had probative value which was not outweighed by its prejudicial effect . . . ." The court held that the testimony was properly considered. "Because the teacher placed his character at issue by offering evidence of specific instances of good conduct, the school board must be permitted to rebut those incidents by showing that the teacher's conduct was not as exemplary as claimed."<sup>21</sup> The court of appeals affirmed the lower court's ruling and the teacher's termination was upheld.

Board of Education v. Wood, 717 S.W.2d 837 (Ky. 1986).

Two fifteen-year-old girls testified at a grand jury hearing that they had smoked marijuana at the apartment of two brothers who were also teachers. The brothers both pleaded guilty to the misdemeanor of unlawful transactions with a minor. The board of education took statements from

the girls and discharged the brothers from their teaching positions. The brothers sued the board of education. A trial court affirmed the termination, but the state court of appeals reversed. The board of education then appealed to the Kentucky Supreme Court. The issue before the supreme court was whether the teachers could be dismissed for acts committed during off-duty hours, in the summer, and in the privacy of their own apartment. The court noted that "a teacher is held to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students." The court decided that the brothers' misconduct was serious and of an immoral and criminal nature. It saw that there was "a direct connection between the misconduct and the teachers' work." The court held that the teachers' dismissals were proper because their actions constituted "conduct unbecoming a teacher."<sup>22</sup> It reversed the judgment of the court of appeals and reinstated the decision of the trial court.

Tate v. Board of Education of Kent County, 485 A.2d 688 (Spec. App. Maryland, 1985).

Deborah Tate, a tenured teacher in Kent County, Maryland, had the misfortune of being present in the apartment of a male friend when the police executed a search warrant and discovered two marijuana plants and various marijuana paraphernalia. Tate was arrested and pleaded "technically guilty" to possession of a controlled dangerous

substance and paraphernalia, even though she maintained that she neither owned nor used the illegal items. She was placed on probation for 18 months.

The county board of education then dismissed Tate because of the guilty plea and because she wrote a threatening note to a student. Tate appealed her dismissal to the state board of education. The state board identified a Maryland law that provided that, when a first offender has completed the probationary period, the "arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose . . ." <sup>23</sup> Therefore, the board reasoned, Tate's dismissal was "premature" because she was still serving her probationary period for a first offense. The board observed that, while there was some parental dissatisfaction with Tate's return to the classroom, there was "little indication that the community was aware that, although Tate entered a technical plea of guilty, she had not admitted to guilt, was not convicted, and was placed on a probationary period which, when successfully served, would expunge her record of the plea of guilty altogether." <sup>24</sup>

The Circuit Court for Kent County reversed the state board's decision and held that Maryland law protects only those first offenders who have completed their probationary

periods. Since Tate was still on probation, the county board was permitted to dismiss her for her guilty pleas.

Tate then appealed to the Maryland Court of Special Appeals. In a unanimous decision on 4 January 1985, this court overturned the lower court. It stated that the "obvious goal" of the Maryland legislature "was to afford a degree of protection to first offenders in certain controlled dangerous substance cases."<sup>25</sup> The lower court's decision that this protection is not available while serving probation but only after the probation has been completed "deprives the statute of effect during the probationary period" and "defies legislative intent."<sup>26</sup>

The Court of Special Appeals hastened to clarify that its reversal of the lower court did not indicate that "we think the State Board's ruling to be correct." Specifically, the court stated that "the State Board appears to have overlooked or ignored pertinent testimony."<sup>27</sup>

The court sent the case back to the state board to reconsider the matter in light of the evidence unrelated to Tate's guilty plea. The court suggested that, even if the guilty plea were ignored, there was sufficient evidence in this case to uphold Tate's dismissal.

#### SUMMARY

Thirty different cases dealing with teacher dismissal for immorality from 1981 to 1986 were reviewed in this chapter. An effort was made to identify, select, and treat

all cases during this time period. These particular cases were selected in order to provide the reader with an answer of just what the courts considered as immoral teacher conduct during this time period. Such conduct included drug and alcohol problems, homosexuality, sexual misconduct with students, encouraging students to lie and cheat, and theft.

In the past, teachers were expected to teach morality through their actions, and when teachers violated community norms, they usually resigned quietly or were fired quickly. What was considered immoral conduct has varied from place to place, and the definition has changed over time.

Teachers are still being fired for immoral conduct, but in most states such conduct must be linked to teacher effectiveness. Many educators believe that their personal behavior away from school is their own business. Yet many administrators still argue that educators teach by example, and thus should be adult models for their students and should conform to the moral standards of the community.

Private matters considered by some to be immoral tend to receive protection from the courts. However, if such behavior becomes public, the teacher stands a greater chance of being dismissed permanently.

Most courts will not allow teachers to be dismissed for immorality involving other adults unless there is clear evidence that such conduct will negatively affect their

teaching. Judges rule differently concerning immoral behavior with students. In these cases courts are generally very strict and require less evidence to uphold teacher dismissal. This is especially true in the area of sexual relations with students.

In general, recent decisions indicate that teachers cannot be dismissed for immoral conduct simply because it is contrary to the mores of a local community. The courts weigh heavily the connection between unacceptable conduct and the teacher's work in the classroom.

As the cases in this chapter have indicated, the law concerning the removal of teachers for immoral or illegal conduct is not always precise. There are no Supreme Court opinions on the topic, and decisions in different states sometimes appear inconsistent. Much depends on the circumstances of the case. Nevertheless, most courts recognize that teachers should not be penalized for their private behavior unless it has a clear impact on their effectiveness as a teacher.



## NOTES

<sup>1</sup> Louis Fischer, David Schimmel, and Cynthia Kelly, Teachers and the Law (New York: Longman Inc., 1987), 224.

<sup>2</sup> Id. at 237.

<sup>3</sup> Id. at 229.

<sup>4</sup> Id. at 231.

<sup>5</sup> Id. at 232.

<sup>6</sup> Edward C. Bolmeier, Sex Litigation and the Public Schools (Charlottesville, Va.: The Michie Co., 1975), 180.

<sup>7</sup> Id.

<sup>8</sup> Connick v. Myers, 461 U.S. 138 (1983)

<sup>9</sup> Merri Schneider Vogel, "Gay Teachers in the Classroom: A Continuing Constitutional Debate," Journal of Law and Education 15 (Summer 1986), 303.

<sup>10</sup> Fischer, Schimmel, and Kelly, supra at 223.

<sup>11</sup> W. Lance Landauer, John H. Spangler, and Benjamin F. Van Horn, Jr., Legal Issues in Public School Employment, Eds. Joseph Beckham and Perry A. Zirkel (Bloomington, Indiana: Phi Delta Kappa, 1983), 155.

<sup>12</sup> Fischer, Schimmel, and Kelly, supra at 225.

<sup>13</sup> Id. at 227.

<sup>14</sup> Clifford P. Hooker, "Teacher Dismissal for Improper Touching or Sexual Contact With Students," Educational Law Reporter 39 (August 20, 1987), 945.

<sup>15</sup> "Dismissal For Immoral Conduct Upheld," Legal Notes

for Educators Vol. VIII, No. 5 (Sept. 1987): 4.

<sup>16</sup> Louis Fischer and David Schimmel, The Rights of Students and Teachers (New York: Harper & Row Publishers, 1982), 135.

<sup>17</sup> Fischer, Schimmel, and Kelly, supra at 231.

<sup>18</sup> Thomas J. Flygare, "Drunk Driving Conviction Not Sufficient To Dismiss Tenured Teacher" Phi Delta Kappan 64 (April 1983): 588.

<sup>19</sup> Fischer, Schimmel, and Kelly, supra at 233.

<sup>20</sup> Id. at 243.

<sup>21</sup> "Teacher Termination Upheld," Legal Notes for Educators Vol. VII, No. 21 (Jan. 1987): 2.

<sup>22</sup> "Teachers' Immoral Conduct Is Grounds For Dismissal," Legal Notes For Educators Vol. VII, No. 22 (Feb. 1987): 2.

<sup>23</sup> Thomas J. Flygare, "Can A Teacher Be Fired For A Marijuana Offense? Maryland Can't Decide," Phi Delta Kappan 66 (June 1985): 729.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

## CHAPTER V

### SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

#### Introduction

As long as this nation has had public schools, teachers have been dismissed for conduct that violated the moral standards of their communities. As exemplars, teachers were expected to teach morality through their actions both in and outside the classroom. When community standards were violated, teachers often resigned quietly or were dismissed quickly. In the past, teachers have been fired for talking about sex, using obscene language, engaging in heterosexual or homosexual conduct, and being rumored to be having an affair. Today, teachers may still be fired for immoral conduct, but in many states such conduct must be linked to a teacher's classroom effectiveness. Moreover, court rulings vary depending upon whether the immoral conduct is discreet or public, and whether it involves another adult or a student.

School officials who employ teachers can also fire them. Courts recognize that school boards have the legal authority to set educational policy and standards, and they are reluctant to substitute their judgment for that of school authorities. When school boards present evidence that the private activity of a teacher is detrimental to the educational environment, the courts are likely to uphold a

decision to dismiss the teacher.

This study has involved an investigation of immorality as a cause for teacher dismissal based on court cases which were litigated between 1966-1971 and 1981-1986. Case study revealed that standards of morality not only differ from community to community but also change from year to year. Therefore, a precise definition of immorality is difficult. Immorality is what courts define it as being at a particular time and that definition has continued to change for the past two decades.

Parents tend to look upon teachers as models for imitation by children, and because parents hope their children will live on a higher moral plane than parents the moral code for teachers is more rigid than for people in many other vocations.

What is "proper"? What is "socially acceptable"? What is "legal"? The answers to such questions changed drastically during the 1960's and 1970's. The value of conformity declined. The value of individuality rose. "Alternative lifestyles" gained acceptance. People's hair styles, clothing, place of residence, and leisure-time activities became recognized as extensions of their personalities.

A review of the literature related to teacher dismissals for immoral reasons was treated in Chapter II. An attempt was made (1) to review and assess the thinking of

scholars in the fields of philosophy, education, and law as revealed in the literature; and (2) to assess movement in the field of education in view of court decisions on teacher dismissals for immorality.

Chapters III and IV contained a review of state and federal court opinions on teacher dismissal for immorality litigated from 1966 to 1971 and from 1981 to 1986.

#### SUMMARY

Since the early history of this country, the public has been far more restrictive in its expectation for the conduct of teachers than for the conduct of the typical citizen. This expectation existed even in colonial New England where religion and education were almost inseparable. More recently, the public was especially critical of teachers during the first half of the nineteenth century when it invoked very rigid moral and religious standards.

Incidents were recorded during the mid-nineteenth century in which teachers were reprimanded, dismissed, fired, imprisoned, and even subjected to mob harassment for real or imagined violations of prevailing public standards. By 1900, state statutes contained provisions that not only prescribed the personal attributes for teacher certification but also, in some instances, specified what must and must not be taught.

A more liberal attitude toward teacher conduct accompanied a relaxation of moral standards during World War

I. Still many teachers had very little freedom in their personal lives until the enactment of statewide tenure laws, especially in rural areas.

By 1950, community pressures had gradually decreased. Even so, it was observed in the 1960's by Bolmeier and Punke that teachers were "more restricted than most citizens in the exercise of their freedoms guaranteed by the Constitution" and "the moral code for teachers is more rigid than for people in many vocations." The 1970's saw teachers with much greater frequency challenging in federal courts their dismissal for personal conduct as being in violation of their federal constitutional and civil rights. Yet the exemplar issue continued to be a factor in many such cases.

Most courts today recognize that teachers cannot be penalized for their private behavior unless it has clear impact on their effectiveness as teachers.

School boards, by tradition, have enjoyed wide discretionary power in determining not only what conduct constitutes immorality, but also in discharging teachers for immorality. Such unchallenged authority of board members subjected the public and private lives and conduct of teachers to close public scrutiny. Thus, for decades in this nation, as a condition of continued employment, teachers have had to sacrifice certain constitutional rights afforded individuals in other vocations.

Under the auspices of the courts, teachers have made

tremendous gains in acquiring full citizenship rights. They are now organized and are socially and politically astute and active. They are challenging the double moral standards imposed on them by society as well as the authority of school boards to adjudge their morality. This progressive stance flies in the face of traditional views of school board powers. No longer is the power of the employing agency absolute. However, evidence abounds to affirm the fact that school boards perceive their role to be guardians of prevailing community values and beliefs and protectors of children. Therefore school boards and school administrators are caught in the crunch between community expectations and the strong push by teachers and the courts to protect the constitutional rights of every citizen, including teachers.

Examination of the literature and court records indicates that the problem of teacher dismissal for immorality centers around the lack of any common conception of the term "immorality." Immorality means different things to different people. For example, the discharged teacher in Governing Board of Nicasco School District v. Brennan alleged that her "long and beneficial use of marijuana" was not immoral. The school and the court ruled that exaggerated public criticism of the superintendent in Watts v. Seward was immoral.

Philosophers have maintained that morality is a social system of regulation akin to law and convention. Yet there

is a widespread but false belief that no such thing as a common morality exists--there is no code of conduct that can be adopted by all people. The philosophers and the courts have related immorality to conduct which is hostile to the general public. But the question then becomes, who is the general public? In today's pluralistic society many sets of cultural mores and many moralities exist. Therefore whose morals shall prevail? The definitional problems fall on the shoulders of the courts.

When the courts have been faced with the term "immorality," they have attempted to define it. Based on court definitions, immorality is defined in Words and Phrases as, ". . . that which is contra mores; or not moral, inconsistent with rectitude, purity or good morals . . ." But this definition relates to cultural mores and morals. It does little to develop a common conception of morality because it fails to deal with splinter or sub-cultural values and beliefs that constitute many diverse moralities.

Traditionally, courts have been loathe to interfere in the administration of schools. Thus school boards have been free to determine what conduct constituted immorality and, accordingly, to dismiss teachers for failure to measure up to their standards. In so doing, teachers' constitutional rights were often abrogated. However, the situation is different today. Teachers have relied on the courts to insure their right of first class citizenship. The courts



have played a prominent role in the emancipation of teachers. In so doing, they have been seen by some as emerging as the key source of educational policy, and accused by others as "taking over" the operation of the schools and the role of school boards. This latter view charges that court decisions outline and detail the policies by which schools operate. There is evidence that the judiciary has evolved from a stance of *lassiez-faire* involvement in school matters before the turn of the century to the present stage of close supervision of school board action when constitutional rights are at stake. The trend of the courts has been toward greater protection of teachers and closer scrutiny of arbitrary and capricious use of board power.

The involvement of the judiciary in the protection of teachers' constitutional rights in no way indicates that "immoral" teacher models cannot be removed from the classroom. The courts merely have plainly and consistently maintained that school board hearings and dismissal proceedings are essentially a judicial function over which the court has a right of review, that the best interests of the school must be served, and that arbitrary or capricious use of power will not survive judicial scrutiny. As long as it can be established that the board's action is for the welfare of the children, and constitutional rights of teachers are not violated, immorality dismissals are likely

to win judicial approval.

The courts have spoken frequently, and continue to speak, to the exemplary responsibility of teachers, and to the protection of children during their "young and tender years." In each case the court must balance the teacher's rights against the broader social welfare. Each case must stand on its own peculiar set of circumstances and each decision is based on the facts before the court.

The volume of litigation covered in this study reflects, on the one hand, the conflict between school boards as interpreters and guardians of community values and beliefs and, on the other hand, teachers who have found new power and freedom and who challenge the right of the employing agency to sit in judgment of their morals.

State statutes are the fountainhead of school board authority. They carry the full force of law until such time as they are struck down or affirmed by the courts. In deciding dismissal cases, the courts must determine if school boards operated within the scope of their statutory authority, while trying to interpret the legislative intent of the respective statute.

Thirty eight states list immorality as a cause for dismissal under such terms as "immorality," "immoral conduct," and "moral unfitness." Most states also use the "catch-all" terms of "good and just cause," "evident unfitness," or "conduct unbecoming a teacher." These terms

also cover immorality. Thus, when immorality is considered within the scope of the above terms, all states have statutory provisions for dealing with immoral teachers.

This study involved a comparison of teacher dismissal for immorality during two, five-year time periods, 1966-1971 and 1981-1986. It also involved a search for a legal definition of immorality. Reasons for dismissal for immorality were drawn from the actual court cases decided during the above time frames. A summary of the findings and then conclusions follow.

#### Summary of Findings for 1966 Through 1971

Most cases in the general immorality area dealt with vulgarity and use of obscene language. Even during the late 1960s, if an act did not affect one's teaching or was an intended part of an instructional plan, firing for immorality was not upheld. Terminations were upheld when it was determined that acts did not pertain to course content or when making public attacks on one's superiors.

Homosexuality cases examined demonstrated that if homosexual acts were private in nature and did not affect classroom performances, terminations were not upheld.

Sexual misconduct other than homosexuality cases examined demonstrated that if conduct involved students, terminations were upheld.

Decisions in alcohol and drug cases tend to depend on the amount of publicity related to the charges. If a great

deal of notoriety was involved, teachers lost appeals and terminations were upheld.

#### Summary of Findings for 1981 Through 1986

Conduct such as pregnancy out of wedlock, cohabitation, using poor judgment in the classroom, shoplifting, lying, and cheating dominated the dockets during the period of 1981 to 1986 under the "immorality in general" area. In most cases, school boards had to show a connection between the conduct and the teachers' performance in the classroom in order to terminate the teacher successfully.

Findings from the cases examined demonstrated that when homosexuality activity involved children or students and became public knowledge, terminations were upheld in each case.

Most of the cases dealing with sexual misconduct other than homosexuality examined involved some type of alleged sexual activity with students. Where students are involved in such acts, courts tend to uphold terminations.

Terminations cases involving teachers for using or distribution of alcohol and/or drugs with students were upheld. Charges of casual and private use of either drugs or alcohol will not generally result in terminations upheld by courts.

#### Comparison of Two Eras

Cases involving immorality in general during both time periods examined required that a nexus be proven. If a

teachers' performance in the classroom was not affected by the conduct considered to be immoral, terminations were not generally upheld. There were no real differences found from one era to the other.

Homosexuality cases from the 1966-1971 era dealt with homosexual activities with other adults. Decisions were based on whether the acts were private or public. Most cases from the later era involved students and courts upheld terminations when homosexual acts occurred between students and teachers.

Termination cases involving sexual misconduct other than homosexuality during both eras tended to involve students in some way. In most cases during both eras, terminations were upheld.

Alcohol and drug cases heard during the 1966-1971 era were usually determined by the amount of publicity and notoriety involved. Students were seldom involved in such cases. By 1981, most alcohol and drug cases involved students and terminations were generally upheld.

Three landmark court cases in three consecutive years turned the judicial tide in favor of teacher protection and restoration of constitutional rights for teachers. Jarvella (1967), Pickering (1968), and Morrison (1969) ushered in a new era of judicial attitude and teacher freedom. Decisions from these three cases greatly diminished the influence of the Horosko principle, although the "exemplary" concept from

Horosko is still felt today.

Jarvella, Pickering, and Morrison established that teachers have a right to privacy, a right to dissent, and a right to due process. In essence, the decisions, especially Morrison, established that dismissal cases turn on whether the alleged immoral act is public or private, whether the act is adversely related to the school community and teacher effectiveness, whether the act is remote in time, and whether notoriety resulted from the teacher's behavior. These legal points have been raised in almost all subsequent dismissal cases and are still used as standards for judgment in immorality cases.

Prior to Jarvella, case law involving teacher dismissal due to immorality was very limited. After Jarvella, Pickering, and Morrison, circumstances that were especially important were: (1) whether the conduct was personal and private, (2) whether it became public through the indiscretion of the teacher, (3) whether it involved students, and (4) whether the teacher's effectiveness as a teacher was impaired. No real differences in court opinions were found in a comparison of similar immorality dismissal cases during the two time periods researched.

Homosexuality and other types of sexual misconduct dominated the courts concerned with immorality dismissals.

In the area of homosexuality, 6 cases were presented in the study. As viewed by the courts, homosexuality per se

does not constitute immorality. Immorality, including homosexuality, must be based on evident unfitness to teach before a dismissal will stand. According to the cases examined, an accused teacher can disqualify himself by promoting his beliefs, by practicing his way of life in public or semi-public view or in a way that is apt to be exposed. If the act is private, removed in time, and becomes known to only a few people through no fault of the teacher, the teacher will generally be protected by the courts. There is no evidence from the cases, however, to support the belief that the courts will uphold the teacher in sexual advances toward children.

In the minds of many, immorality has traditionally been equated with sexual misconduct. The great bulk of dismissal cases dealing with sex support the above conclusion. Eleven cases dealing with sexual misconduct, other than homosexuality, were treated to illustrate the range of charges and court decisions.

An examination of the cases reveals that the time and place of occurrence, as well as the nature of the sexual act, are factors in establishing whether the accused teacher is unfit to teach, thus being immoral. In the case of adultery, an act that occurred in a remote place not apt to be discovered except through great effort was found by the court not to redound adversely on the teacher's fitness to teach.

Courts have upheld the board's right to inquire into the character and integrity of its teachers but prohibited dismissal on inferences of "wrongdoing" drawn from cohabitation. On the other hand, where a teacher was forewarned that her cohabitation was adversely affecting the school community through attracted notoriety, dismissal was upheld.

In several sexual misconduct instances where defense was based on Morrison, the courts drew distinctions among private, semi-private, and public acts and acts on private property. If the sexual acts are to be protected under the "right to privacy" principle they must in fact be private and not reasonably subject to discovery.

Often immorality dismissals for sexual misconduct depend on whether the act in question tends to affect the teacher-student relationship. When the act involves a minor student it is most likely to be found to reflect on previous or future teacher-student relationships, therefore it is not protected by the court.

In two cases the courts spoke plainly to the issue of equating unwed motherhood with immoral conduct. Such beliefs as reflected in school policies prohibiting employment, terminating employment, and withholding maternity leave were seen to brand a teacher as being "immoral" for past behavior and amounted to a penalty against women and not against men, thus violating rights



under the equal protection clause of the fourteenth amendment.

Improper classroom behavior or questionable teaching materials and methods have been seen as being immoral or unprofessional to the degree that they reflect on the teacher's moral character. Six such cases were presented in the study.

In the area of improper classroom behavior, the courts have found that vulgar gestures about the superintendent in the presence of students pass the limit of bad taste and vulgarity and therefore constitute immorality and unfitness.

The courts have ruled that when teachers with good intentions pursue a bona fide educational purpose that does not adversely affect the welfare of the school or the pupils, a dismissal for immorality will not be upheld by the courts.

Criminal behaviors that have led to certificate denial or revocation and contract revocation and contract termination include: alcohol and drug violation, larceny, theft, shoplifting, budgetary reasons, falsification of records, and lying. In cases presented by administrative bodies, their actions and arguments have been based on one premise: The teacher's conduct can set a poor example for students. Courts have currently ruled that involvement alone of a teacher in a criminal action does not necessarily warrant a dismissal or revocation or denial of certificate.

In many cases, a court considers such questions: (1) Does the alleged criminal conduct of the teacher affect the teacher's ability to maintain the respect of students, parents, community and educational staff? (2) Is the teacher's teaching ability and performance unaffected by the criminal conduct?

With problems of alcohol and drug abuse among school children becoming almost commonplace, one might expect the courts to view teacher conduct involving alcohol and drugs in the same light as sexual conduct between teachers and students. However, as case law has developed, the argument that proof of the conduct provides the needed evidence of unfitness has been rejected.

In general, courts question the character and fitness of teachers who commit crimes, falsify records, or lie to school officials.

### CONCLUSIONS

Society believes that, because of the nature of their position, teachers have the responsibility for developing and shaping the attitudes and character of children. Teachers, no doubt, have accepted this responsibility; but, as they began to assert their constitutional rights, they questioned society's right to control their personal lives as illustrated in the cases in this study. As teachers gained more control over their personal lives, school authorities continued to attempt to discipline teachers for

being involved in "immoral" activities.

Terms such as "immorality" and "immoral conduct" are difficult to define, since subjective judgment is involved. Nevertheless, courts have attempted to give clearer meaning to these words, because they often appear in statutes. The Supreme Court of Minnesota held that immoral conduct includes "such acts and practices as are inconsistent with decency, good order, and propriety of personal conduct." Similarly, the Supreme Court of Oklahoma indicated that immoral conduct is that conduct "which is willful, flagrant, or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community." A broader, but by no means comprehensive, definition of immorality was supplied by the Supreme Court of Pennsylvania when it declared that "immorality is not essentially confined to deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." In recent teacher dismissal cases courts have generally avoided such generalizations and have tended to relate immorality to unfitness to teach.

Violations of the moral code of the community in school may have a direct impact upon students and thus constitute just cause for dismissal. On the other hand, immorality outside the school building and on the educator's own time

might have no ill effects on students and no discernible relationship to job performance and efficiency. Furthermore, it must be remembered that the teacher has the right to live his life as he chooses. The courts have moved toward establishing job-related criteria by which to judge the impact of acts of immorality outside the school setting.

Courts consider the effect of immoral acts on students and the effect of the teacher's relationship with other school employees and his/her standing in the school community. Notoriety is often the determining factor in cases involving dismissal of teachers on ground of immorality.

The following guidelines have emerged from cases involving the moral turpitude of teachers:

1. Teachers can be dismissed for immorality. The courts have ruled, however, that constitutional rights must be protected in the process.
2. Legal definitions of immorality are broad and ambiguous. Courts are reluctant to declare the commission of "depraved acts" as constituting immorality. There is a tendency on the part of courts to link "immorality" with "unfitness to teach". Community values are considered the standards by which acts are judged to be immoral.
3. All state legislatures have set forth in statutes provisions with respect to proper teacher models for children, and grounds for removal of teachers of doubtful

moral character.

4. The trend of the judiciary is toward greater protection for teachers and their individual rights and toward limiting the discretionary freedom of school boards.

5. The use of obscene words and materials in the classroom is not necessarily ground for dismissal. Acceptable educational purposes and practices and the age of the students in the classroom are also factors. Certain verbal behavior of teachers has been construed as offensive to community standards and just cause for the discharge of teachers.

6. Unwed parenthood cannot be equated with immorality, and school policies cannot reflect community morals in this respect.

7. Evident unfitness is based on adverse relationship between the act in question and the teacher's classroom function.

8. The courts look with disfavor upon sexually intimate acts that are an abuse of pupil/teacher relationships.

9. Immoral acts outside the school setting tend to be judged by job-related criteria. If dismissal is justified, there must be a discernible relationship between "debased deeds" outside the school and one's ability to teach. Dismissal is likely to occur when unwholesome acts diminish the effectiveness of the teacher in the classroom, impair relationships with the staff, affect the standing of the

school as an educational institution, and create a furor in the community. The testimony of school officials as to the disruptive effects of a teacher's immorality on the children, staff, and school has been ascribed probative value in most cases.

10. The use of marijuana or advocacy of its use, especially when attended with notoriety, has been deemed immoral conduct and is equated with unfitness to teach.

11. Homosexuality is not in and of itself a cause for denial of certification, revocation of certification, or discharge from employment. However, teachers who publicly proclaim their homosexuality or whose acts attract publicity run the risk of incurring community wrath and losing their positions.

12. A dismissal for immorality generally will be upheld whenever it can be shown that:

- . The act attracts notoriety to the degree that it redounds adversely on the school community.
- . The act is public or subject to public discover.
- . The act is so divergent from the normal human practice that the act per se is immoral.
- . The commission of the act constitutes a crime.
- . The act is committed with or to the knowledge of students.
- . The act shows a potential for misconduct on the part of the teacher.
- . The accused teacher publicly promotes a divergent lifestyle.
- . The accused teacher uses obscene literature and/or language not related to the subject taught.
- . The practice of the act is current and known by the school community.
- . The act develops from a teacher-student relationship or is likely to affect future teacher-student relationships.

13. A dismissal for immorality generally will not be held legal whenever it can be proven that:

- . The act is an isolated instance and does not show a potential for misconduct.
- . The act is private and becomes public only through great effort or through one individual.
- . The act is committed in a remote place and removed in time.
- . The act is committed with good intent and is related to educational objectives.
- . The act is non-criminal in nature and attracts little notoriety.
- . The act is not offensive to community values and beliefs.
- . The act cannot be shown to affect adversely the teacher-pupil relationship or school community.
- . The charges are conclusions drawn from inferences of "wrong doing."
- . The teacher has not been forewarned or directed to discontinue an act in question if the act has been committed previously.

From the cases and literature examined from the two time periods of 1966 to 1971 and from 1981 to 1986, a judicial definition of immorality would be such acts, practices, or conduct that would render a teacher unfit to teach in a particular community or area; the acts, practices, or conduct may be such that offends the morals of a community and are a bad example to the youth whose ideals a teacher is supposed to foster and elevate.

### RECOMMENDATIONS

#### For educators

Factors to be considered in determining if a teacher's "immoral conduct" renders him or her unfit to teach might include the following:

1. the age and maturity of students of the teacher

- involved;
2. the likelihood that the teacher's conduct will have adversely affected students or other teachers;
  3. the degree of the anticipated adversity;
  4. the proximity or remoteness in time of the conduct;
  5. extenuating or aggravating circumstances surrounding the conduct;
  6. the likelihood that the conduct may be repeated;
  7. the motives underlying the conduct;
  8. whether the conduct will have a chilling effect on the rights of the teachers involved or of other teachers.

#### Recommendations for further study

Teacher dismissal due to "immorality" has been taking place for a long time. With teachers gaining new freedoms during past few decades, there will likely be an increase in teachers challenging their dismissal due to "immorality". These challenges will be decided in the courts. What can teachers and administrators expect as we get ready to enter the last decade of the twentieth century? With this question in mind, the following recommendations are made for further study:

(1) It is recommended that a study be conducted to examine the cases litigated during the time period of 1971 to 1981 to determine how courts ruled on teacher dismissals due to immorality.

(2) It is recommended that a study be conducted to determine the different types of action considered to be "immoral" for dismissal purposes in each of the fifty states.



(3) It is recommended that a study be conducted to examine the cases litigated on teacher dismissal due to "immorality" from 1986 to the present.

(4) It is recommended that a study be conducted to compare reasons for teacher dismissal due to "immorality" in different geographical regions of the United States.

(5) It is recommended that a study be conducted of teachers acquitted of charges of immorality. The study should focus on the teacher's employment and the setting in which that teacher is employed.

(6) It is recommended that a study of teacher dismissal for immorality be conducted by the various federal circuits with emphasis on the definition of immorality by each circuit.

(7) It is recommended that a study be conducted to compare teacher dismissal for immorality by gender.

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