THE LEGALITY OF TEACHER DISMISSALS FOR IMMORALITY

by

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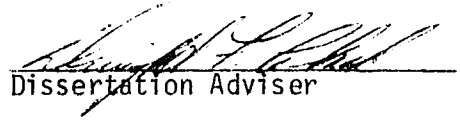

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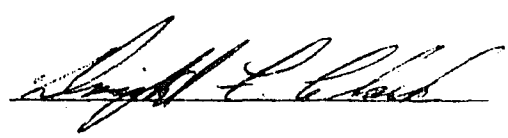
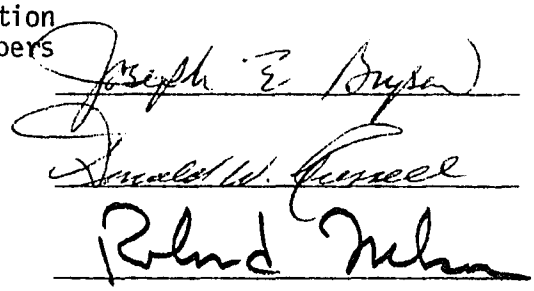
Dissertation Adviser 

Oral Examination Committee Members 

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Most states list immorality as a statutory cause for teacher dismissal. Under the authority of state statutes, school boards are the legal agents in employing teachers and in determining what conduct constitutes immorality as a basis for dismissal. Due to the fact that immorality is a nebulous term, much debate and litigation centers around the lack of a common conception of the term. Teachers have challenged the right of school boards to judge their morality and to discipline teachers accordingly. And the courts are playing an increasingly prominent role in such matters where constitutional rights are at stake.

Data for this study are based primarily on dismissal court cases during the period of 1967 through January 1976. All state statutes were searched to determine statutory provisions for dealing with dismissals and to determine any trend toward amendments in view of recent litigation. Additional data have been collected through a review of the literature and a nation-wide survey of chief state school officers and state attorney generals.

Analysis of the literature and major court cases across the nation indicates a judicial trend toward more protection of teachers and closer scrutiny of the arbitrary and capricious use of board power.

The courts have not said that "immoral" teachers cannot be discharged. They have merely said that constitutional rights have to be protected in the process. Teachers can be dismissed for a wide range of behaviors on the grounds of immorality. But in order for a dismissal to be upheld, the "immoral" act must be proven to render the teacher unfit to teach. Generally, the act in question must be proven to relate

adversely to the teacher-pupil relationship or be detrimental to the orderly educational process.

Analysis of court decisions indicates that teacher dismissals for immorality will generally be upheld by the courts if the act in question is criminal in nature, attracts notoriety, is committed in public or semi-public places, involves students, shows a potential for misconduct, or if the accused teacher disqualifies himself through making his status known or through deviating from educational objectives in promoting divergent life styles. The data show that immorality dismissals are not likely to be held legal if the act in question is private in nature, does not involve students, is removed in time, is related to educational objectives, and demonstrates no potential for misconduct.

Data from the nation-wide survey of chief state school officers and state attorney generals indicate a concern over interpretation and application of the term "immorality" as a statutory grounds for teacher dismissal but only slight movement toward changes in statutes in view of recent court decisions.

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Leonard H. Simmons

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CHAPTER I

INTRODUCTION

Historically, in the United States teachers have been expected to adhere to high moral standards in their private lives as well as in their public lives.[1] Evidence abounds on the fact that school boards and the courts hold teachers to be examplars.[2] In 1939, the courts upheld the stringent standards of conduct required of teachers by school boards.

> 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.[3]

In addition to the Horosko court ruling, in 1958 the United States Supreme Court declared, "We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness."[4] As recent as 1973 in Pettit v. State Board of

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[1]Edward C. Bolmeier, Teachers' Rights, Restraints and Liabilities (Cincinnati: W. H. Anderson Co., 1971), p. 22; see also Blaine L. Carlton, "Pettit v. State Board of Education: Out of Classroom Sexual Misconduct as Grounds for Revocation of Teaching Credentials," Utah Law Review (Winter 1973), 798.

[2]Appeal of Batrus, 148 Pa. Super. 587, 26 A. 2d 124 (Pa. 1942); Horosko v. School District of Mount Pleasant Township, 335 Pa. 369 at 371, 6 A. 2d 866 at 868 (Pa. 1939).

[3]Horosko v. School District, op. cit.

[4]Beilan v. Board of Education, 386 Pa. 82, 125 A. 2d 327, 357 U. S. 399 (Pa. 1958).

Education,[5] the California court maintained that,

> The intimate and delicate relationship between teachers and students requires that teachers be held to higher standards of morality in their private lives that may not be required of others.[6]

Standards of teacher morality have generally remained relative to the local community and the discretion of school boards, with their conduct subject to close public scrutiny.[7] In fact, at one time it appeared common for teachers to serve at the pleasure of the board. Furthermore, ". . . there has always been concern about the competency and orientation of teachers as judged by those who control the schools."[8] For example, a teacher's contract in Virginia for the 1935 school year stipulated that teachers could not keep company with sorry young men; a Tennessee contract required teachers to refrain from any and all questionable pastimes; and an Alabama contract required the teacher to agree not to have company or go automobile riding on Monday, Tuesday, Wednesday, or Thursday nights.[9]

Under the authority of state statutes, school boards have functioned well within their rights in concerning themselves with the moral conduct of teachers in their employ.[10] In fact, an early Arkansas

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[5]Pettit v. State Board of Education, 10 Cal. App. 3d 29, 109 Cal. Rptr. 665 at 667 (Calif., 1973).

[6]Pettit v. State Board of Education, loc. cit.

[7]Harold H. Punke, The Teacher and the Courts (Danville, Illinois: Interstate Printers and Publishers, 1971), p. 617.

[8]Ibid.

[9]David Rubin, The Rights of Teachers (New York: Discus Books, 1972), p. 109.

[10]John Carter Davis, "Immorality and Insubordination in Teacher Dismissals: An Investigation of Case Law, Statute Law, and Employment

case pointed out that such concern was more than a right, it was an obligation.[11]

Through the years the courts have generally deferred to the school boards determination that sufficient grounds for dismissal exist.[12] In support of the discretionary power of school boards to dismiss teachers for immorality, a Louisiana court stated,

> No pre-established objective criteria ever are needed to dismiss (a) staff member who is guilty of conduct repulsive to minimum standards of decency . . . required by virtually all employers of their employees, and especially required of public servants such as school teachers.[13]

Although the discretionary power of the school boards to determine immorality and to discharge teachers has much support in state statutes and the courts, recent cases demonstrate the fact that school board hearings and dismissal proceedings are essentially a judicial function over which superior court has a constitutional right of review.[14] In all dismissal actions the best interests of schools must be intended, and arbitrary or capricious use of power will not survive judicial scrutiny.[15]

Contracts," (unpublished Ph. D. dissertation, University of Texas at Austin, 1971), 31.

[11]School District of Fort Smith v. Maury, 53 Ark. 471, 14 S. W. 669 (1890), quoted by John C. Davis, op. cit., p. 31.

[12]Williams v. School District No. 40, 4 Ariz. App. 5, 417 P. 2d 376 (Ariz. 1966).

[13]Smith v. Concordia Parish School Board, 393 F. Supp. 1101 (W.D. La. 1975).

[14]Francisco v. Board of Directors of Bellevue Public School District No. 405, 537 P. 2d 789 (Calif. 1975).

[15]Beverlin v. Board of Education of Lewis County, 216 S. E. 2d 554 (W. Va. 1975).

Through the nineteenth century the courts have supported the inherent right of the employer to dismiss employees without question.[16] This legal principle has traditionally encompassed the public school domain, with school boards viewing teachers as employees in an employer-employee relationship. But with the rise of labor unions, professional teacher organizations, and court litigation, this principle of employer right has eroded.[17] Perhaps more than for any other factor, the Monge v. Beebe Rubber Company case in 1974 abrogated the principle that the employer's power to discharge is absolute.[18] However diminished the principle of the right of the employer to dismiss may be, its influence is still evident in the education enterprise. Therein lies part of the conflict between teachers and school boards in the area of teacher dismissals on grounds of immorality.

School boards are finding little solace in the statutory authority, as federal courts in several recent cases have ruled statutes invalid because the term "immorality" as spelled out in education codes was too vague to be used as a basis for dismissal.[19] Such vagueness could conceivably permit unlimited interpretation by school boards to the extent that any teacher could be subject to dismissal at the arbitrary discretion of a school board.

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[16]Daniel A. Matthews, "A Common Law Action for the Abusively Discharged Employee," Hastings Law Journal, XXVI, (May, 1975), 1435.

[17]Ibid.

[18]Monge v. Beebe Rubber Co., 316 A. 2d 549 (N. H., 1974).

[19]Burton v. Cascade School District Union High School District No. 5, 353 F. Supp. 254 (Ore., 1973); see also Jarvella v. Willoughby-Eastlake City Board of Education, 233 N.E. 2d 143 (Ohio, 1967).

Where the state statutes spelled out the acts that constitute immorality on the part of teachers, the courts have upheld dismissals in most instances.[20] Yet few state legislatures have to date defined immorality.

Although a number of federal court rulings have been in favor of the dismissed teacher as long as the alleged immoral act had no clear nexus to job performance or school efficiency, other court cases have supported the basic right of school boards to determine cause and to dismiss teachers for immoral conduct as long as due process was protected.

There is a great amount of writing in the area of school law and much attention given to isolated court decisions concerning teacher dismissals and teacher rights. But there is a scarcity of information available of a comprehensive nature dealing exclusively with teacher dismissal for immorality. The more comprehensive treatment of the topic was by Bolmeier through analysis of selected cases in several publications[21] and one chapter on the topic in an unpublished dissertation by Davis in 1971.[22] Many changes have occurred since that time.

This study, among other stated purposes, will examine the nature of those changes and the impact of such changes on state superintendents and state attorney generals. Also, evidence of court influence on state legislative bodies as revealed through statutory revisions will be examined.

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[20]Hankla v. Governing Board of Roseland School District, 120 Cal. Rptr. 827 (1975); and Pettit v. State Board of Education, 10 Cal. App. 3d 29, 109 Cal. Rptr. 665 (1973).

[21]Edward C. Bolmeier, loc. cit.; also see The School in the Legal Structure (Cincinnati: W. H. Anderson Company, 1968); and Sex Litigation in the Public Schools (Charlottesville, Virginia: The Michie Company, 1975).

[22]John Carter Davis, loc. cit.

STATEMENT OF THE PROBLEM

School boards and school officials are caught in a dilemma. On the one hand communities are expecting that traditionally high standards of morality be practiced by teachers and are holding school officials responsible for disciplining teachers who do not adhere to local moral values and mores. On the other hand teachers are increasingly challenging through the courts the concept of the employer's right to dismiss teachers for acts in their private lives as well as the discretionary power of school boards to determine immorality and to dismiss teachers for immoral causes.

Different courts have reached different decisions on the issue of teacher dismissal for immoral causes. No clear pattern of court rulings is evident. State legislative bodies are unable or unwilling to remove immorality from their statutes as a cause for teacher dismissal. Courts are striking down immorality as a basis for dismissal due to the vagueness of the term, yet few legislatures have defined immorality for the sake of legal clarity.

A need clearly exists for examining the status of the problem of teacher dismissal for immoral conduct and for formulating a working definition of the concept of immorality in the field of public education, as well as for setting forth legal guidelines for dealing with the issues involved.

Analysis of the Problem

This study attempts to examine the problem by seeking to answer the following questions:

1. What is revealed in current literature related to teacher dismissal and moral issues?

2. What is the status of statutory law related to teacher dismissal for immoral causes?

3. What is the status of case law on the issue and what are the major decisive factors in case rulings?

4. Can any discernible patterns and trends be identified and legal guidelines set forth from analysis of the research?

5. What are the problems and opinions of state attorney generals and chief state school officials concerning teacher dismissal related to moral issues?

6. Is there widespread agreement on what behaviors or acts constitute immorality on the part of public school teachers?

7. Are state-level movements underway to define and standardize the concept and term "immorality" or to brief school officials on the legal problems associated with such teacher dismissal?

IMPORTANCE OF THE STUDY

Presently, state statutes list immorality as a basis for teacher dismissal more often than any other cause. Few statutes define immorality. Other state statutes list other causes closely related to immorality such as unprofessional conduct, good cause, or general unfitness to teach. Few statutes define these terms. Thus school boards have enjoyed broad discretionary power in determining what acts constitute immorality. Traditionally, the courts have generally deferred to school boards to determine whether sufficient cause for dismissal exists. But that situation has now changed.

Recent trends of increased teacher militancy, professional negotiations, unionism, and teacher organizations, coupled with teacher surpluses and due process guarantees, have brought about increased demands

for greater teacher autonomy, job security, and protection of constitutional rights for teachers as enjoyed by all other citizens. Simultaneously, school boards, which serve as guardians of taxpayers' interests, view the economic decline and teacher surplus as an opportunity to hold teachers more accountable for both classroom performance and high standards of moral conduct.

Teacher demands for greater autonomy and protection against dismissal and the school board's view as protectors of community values, interests, and mores create an open conflict between the interests of the two parties.

Out of this conflict arise many court cases initiated by teachers who believe the school board and its agents acted capriciously or violated individual constitutional rights. The discretionary power of school boards is seriously challenged. State statutes have been struck down by the courts for their vagueness and the ambiguous use of the term "immorality." Likewise, teachers are challenging through the courts the double standard of conduct expected of teachers and not required of others. During the litigation, the courts have ruled repeatedly that the constitutional right of due process must be guaranteed in all instances. The "due process" guarantees have opened avenues for litigation by aggrieved teachers.

In the midst of this milieu, school boards and school administrators are groping for direction. Undoubtedly, some boards will hesitate to attempt teacher dismissal on grounds of immorality due to the difficulty of defining exactly what behavior constitutes immorality and whether the courts will agree. And undoubtedly others will stand solidly behind the inherent right of school boards not only to determine

immorality but to identify it in teachers' conduct and to dismiss teachers on the basis of immorality. Either approach is subject to problems and litigation.

It is important to all parties concerned that the problem of teacher dismissal related to moral issues be examined to determine the nature and extent of the problem and to determine direction for future actions.

PURPOSE OF THE STUDY

The purpose of the study is to examine the literature, statutory law, and case law related to teacher dismissal for immoral causes. A second purpose is to survey state attorney generals and chief state school officers concerning the status and magnitude of the issue of teacher dismissal for immoral causes as set forth in respective state statutes.

Further, the study proposes to determine if any common agreement can be found on what behavior constitutes immorality on the part of public school teachers as interpreted by courts, attorney generals, and chief state school officers.

Finally, the purpose of this study is to arrive at some conclusions as to the legality of teacher dismissal for immorality, and to set forth some legal guidelines and conditions for attempting to dismiss teachers for acts that might be construed as immoral under state statutes.

SCOPE OF THE STUDY

This study is an investigation of the legality of teacher dismissal for immoral causes. It encompasses an examination of the School Codes in the statutes of all fifty states, an examination of case law as

contained in all related cases heard before the United States Supreme Court, the United States Circuit Court of Appeals, the Federal District Courts, and pertinent state court cases.

An examination of related literature is made and summarized. In cooperation with the North Carolina Attorney General's Office and the State Department of Public Instruction, questionnaires were mailed to the attorney generals and chief state school officers in all fifty states.

The first chapter deals with background information, the problem, analysis of the problem, importance of the study, purpose and scope of the study, methodology, and definition of terms used.

Chapter Two contains an examination and analysis of the literature related to teacher dismissal and moral issues: the nature of immorality and definitional problems, the court influence in school matters, and legal principles from immorality cases.

Chapter Three is concerned with statutory law on the issue of immorality and related causes for teacher dismissal. All fifty states statutes are examined. Three tables show the number of states which list immorality as a ground for dismissal and the various terms used to cover the concept.

Chapter Four examines case law. An attempt is made to categorize all major court cases dealing with teacher dismissals or license revocation for immoral causes during the period of 1939-1975, to examine the issues involved and the points each case turned on, and to analyze the decisions.

Chapter Five describes the nature, purpose, treatment, and analysis of a nation-wide survey of attorney generals and chief state school officers.

Chapter Six contains an analysis and summary of the study. Conclusions are drawn and guidelines are offered.

METHODOLOGY AND SOURCES OF DATA

Secondary Sources

The first stage of the research involved a search of the Educational Administration Abstracts and Dissertation Abstracts and then examination of copies of dissertations whose titles appeared to be related to the topic under investigation to determine the need for research on the problem. The second step was to locate educational and legal journal articles dealing with teacher dismissals and moral issues. 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 the card catalogs and libraries at UNC-G, UNC-Chapel Hill, and Duke University Law Library.

Primary Sources

Questionnaires were mailed to the fifty state attorney generals and state school superintendents to obtain current opinions and data.

State statutes and case law were the primary basis of this study. The Education Code and Pocket Supplements of the fifty states were the sources of state statutes dealing with teacher dismissal for immoral causes.

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 suspension," 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, conduct unbecoming a teacher, etc.

Other citations were obtained from the following legal encyclopedias: Corpus Juris Secundum, American Jurisprudence, Words and Phrases. State statutes and textbooks were also a source of citations.

All cited cases were then read in the respective National Reporters and the American Law Reports. As a last step the cases were shepardized* in Shepard's Citations.

DEFINITION OF TERMS

Certiorari - "A writ issuing from a superior court calling up the record of a proceeding in an inferior court for review."[23]

Dismiss - "To send away; to discharge; to cause to be removed temporarily or permanently; to release from duty."[24]

Legal - "Conforming to the law; according to the law; required or permitted by law; not forbidden or discountenanced by the law; good and

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*A commonplace term in legal research used to refer to checking for later citations.

[23]The American College Dictionary (New York: Random House, 1967).

[24]Henry Campbell Black, Black's Law Dictionary, Rev. 4th Ed. (St. Paul, Minn.: West Publishing Co., 1968).

effectual in law."[25]

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 its anonyms are: decent, upright, good, right. That may be immoral which is not decent."[26]

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."[27]

Immoral conduct and immoral cause - These terms are used interchangeably with "immorality" when such use may enhance communication of concept, due to the relativity and vagueness of the term "immorality."

Mandamus - "A writ from a superior court to an inferior court or to an officer, a corporation, etc. commanding a specified thing to be done."[28]

Moral Turpitude - ". . . anything done contrary to justice,

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[25]Black, op. cit.

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

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

[28]The American College Dictionary (New York: Random House, 1967).

honesty, modesty, or good morals."[29]

Notorious - "Widely but unfavorably known."[30]

Other causes related to immorality - Some state statutes list in lieu of, or in addition to, "immorality" such catch-all terms as "good cause," "unprofessional conduct," "general unfitness to teach," under which immorality may be listed as a cause for dismissal.

Sodomy - "Carnal intercourse between persons of the same sex, or with an animal, or unnatural carnal intercourse with a person of the opposite sex."[31]

Teacher - The term "teacher" is used in a broad context in this study. It encompasses any public school professional educator below the rank of assistant superintendent.

Turpitude - ". . . inherent baseness or vileness of principle, words or actions; depravity."[32]

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[29]Words and Phrases, Vol. 27A, (1961).

[30]The American College Dictionary (New York: Random House, 1967).

[31]Irving Shapiro, Dictionary of Legal Terms (Jamaica, N. Y.: Gould Publications, 1969).

[32]Words and Phrases, Vol. 42A, (1952).

CHAPTER II

REVIEW OF RELATED LITERATURE

The purpose of this chapter is to examine the literature related to teacher dismissals and moral 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 grounds of immorality; (3) to build a conceptual base for the following chapters. In essence, this chapter deals with the question stated in chapter one under the problem statement: "What is revealed in current literature related to teacher dismissals and moral issues?" In answering the question, the literature is treated in three broad categories: (1) the concept, nature, and definition of the terms "morality" and "immorality;" (2) the influence of the courts on school boards, school policies, and immorality dismissals; (3) the literature on immorality and court decisions.

The Nature of Immorality and Definitional Problems

The research from this study indicates that most of the problems of teacher dismissals for immoral causes center around interpretation of the term "immorality." The research shows that traditionally "immorality" was what school boards said it was. By-and-large school boards determined what teacher behavior constituted immorality, and generally

the courts supported the school board's right to make that determination. But the study also shows that such unlimited board discretion is not the case today. Teachers over the past decade 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 are 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.[1]

Therefore, it seems appropriate to examine the nature and definition of morality and immorality revealed in the literature in search of a common understanding of a concept that is the source of much disagreement and litigation.

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.[2] 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 asserts that morality is an "unusual word" seldom used alone

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[1]Source: Survey of Court Cases Covered in Chapter Four.

[2]Burton v. Cascade School District, Union High School No. 5, 353 F. Supp. 254 (Ore. 1973).

without some qualification.[3] He hints 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.[4] He states 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. But although this belief is widespread it is false.[5]

Gert maintains 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."[6] He further states that "The problem is the result of the fact that no one realizes there is a problem."[7]

Accordingly, Gert gets at the problem by attempting to define and clarify the term "morality" though a set of ten moral rules, to which he adds the dimension of "ideals" to complete the concept of "morality."[8] The list below shows Gert's moral rules in the first column, rules that the rational man requires everyone be careful always to obey. The second column shows the moral rules as stated when the element of "ideals" is incorporated, rules that the rational man encourages one to follow.

The Moral Rules	The Moral Ideals
1. Don't kill	Prevent killing
2. Don't cause pain	Prevent the causing of pain
3. Don't disable.	Prevent disabling

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[3]Bernard Gert, The Moral Rules (New York: Harper and Row, Publishers, 1970), p. 3.

[4]Ibid. [5]Ibid., p. 4. [6]Ibid.

[7]Ibid., p. 128. [8]Ibid., p. 128

4. Don't deprive of freedom of opportunity.	Prevent the deprivation of freedom of opportunity
5. Don't deprive of pleasure.	Prevent the deprivation of pleasure
6. Don't deceive.	Prevent deceit
7. Keep your promise.	Prevent the breaking of promises
8. Don't cheat.	Prevent cheating
9. Obey the law	Prevent the breaking of the law
10. Do your duty	Prevent the neglect of duty.[9]

The above set of rules constitute "morality" as Gert conceives the term. It is interesting to note the reflection of the above conception of morality in the various state statutes dealing with immorality and teacher dismissals treated in chapter three of this study.

Frankena, as well as some courts, examine 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.[10]

He speaks to the nature of morality, thus: "Considered as a social system of regulation, morality is like law on the one hand and convention or etiquette on the other."[11]

Frankena indicates that morality is the "moral institution" of life of which each individual 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.[12] He states,

> Morality . . . is . . . a social enterprise, not just a discovery or invention of the individual for his own guidance. Like one's

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[9]Ibid., p. 128

[10]William K. Frankena, Ethics (Englewood Cliffs, N. J.: Prentice Hall, Inc., 1973), p. 8.

[11]Ibid., p. 7.

[12]Ibid., p. 6.

> 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.[13]

Like Gert, Frankena implies 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 as shown in Chapter Four raises a question as to whether a common morality exists and can be recognized by individual members of the society. Accordingly, the society, and particularly the judiciary, is becoming more liberal in its judgment of teacher behavior.[14]

Like the courts in past years, Giruetz speaks to the cultural relativity of morality and the basis of morality. In speaking of cultural mores as the standards of good and right, he quotes 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.[15]

It would appear, however, from the literature and litigation examined in this study that the mores are in a state of flux or that there are many different sub-culture or pluralistic mores rather than a common morality or set of mores.

Gert, Frankena, and Giruetz add credence to the idea of a

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[13]Ibid.

[14]Edward C. Bolmeier, Sex Litigation and the Public Schools (Charlottesville, Va.: The Michie Company, 1975), p. 5.

[15]Harry K. Giruetz, Beyond Right and Wrong (New York: The Free Press, 1973), p. 16.

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. The state statutes and the courts are concerned with 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.

The courts and philosophers have given some clues toward a common concept of morality and immorality. As the 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 states that immorality is a term which is difficult to interpret as a legal cause.[16] He cites Jarvella v. Willoughby as a case in point, in which the courts 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

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[16]Bolmeier, Teachers' Rights, Restraints and Liabilities, p. 20.

> be considered in the context in which the legislature considered it, as conduct which is hostile to the welfare of the general public.[17]

The phrase, ". . . as conduct which is hostile to the welfare of the general public" should be kept in mind as the study proceeds. It would appear that "hostile to the general public" is as vague a term as the term "immorality" in a pluralistic society.

In the quoted passage from Jarvella v. Willoughby, supra, the courts attempt 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 the 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 quotes from an early Michigan case to support his point. In that quotation the Supreme Court of Michigan not only

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[17]Ibid., p. 20.

related immorality to social mores but broadens 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 . . . .[18]

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.[19]

Other investigators have illustrated the scope and nature of "immorality" as reflected through court cases. Punke claims that immorality is primarily thought of in terms of sex behavior, but it has wider implications.[20] In one chapter of his treatise, Punke demonstrates the scope of the term "immorality" through his survey of court cases in nine broad categories. The following list shows kinds of behaviors 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

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[18]Schuman v. Pickett, 277 Mich. 225, 269 N. W. 152 (Mich. 1963), cited by Bolmeier, Teachers' Rights, Restraints and Liabilities, p. 21.

[19]Bolmeier, Teachers' Rights, Restraints and Liabilities, p. 20.

[20]Punke, The Teachers and the Courts, p. 584.

irresponsibility, (7) bad behavior in teaching sex education, (8) several aspects of immorality combined, and (9) immorality versus other available charges.[21]

In an unpublished dissertation in the same year of Punke's publication, supra, Davis' examination of court cases reflected the scope of the legal interpretation of the term "immorality" as a cause for teacher dismissal. Davis categorized the cases under "immorality" into six broad areas with several subdivisions. An outline of his categories follows:

Sexual misbehavior
- Notoriety
- Co-habitation with a former student
- Improper display of affection
- Suspicion of immorality
- Improper sex instruction
- Immoral acts in former years
- Conviction of a sex offense
- Homosexual behavior

Vulgarity
Use of alcohol
Dishonesty
- Falsification of facts
- Theft
- Cheating on tests

Acts hostile to the school system or personnel
Criminal indictment[22]

The studies by Punke and Davis, supra, were published after the Alaska case of Watts v. Seward School Board.[23] But both studies found that in spite of the Alaska court's suggestion that another term be substituted

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[21]Ibid., pp. 584-594.

[22]John Carter Davis, "Immorality and Insubordination in Teacher Dismissals: An Investigation of Case Law, Statute Law, and Employment Contracts," (unpublished Doctoral Dissertation, University of Texas at Austin, 1971), pp. 31-68.

[23]Watts v. Seward School Board, 395 P. 2d 591 (Alaska 1964), remanded 381 U. S. 126, 421 P. 2d 586 (affirmed), cert. denied 397 U. S. 921 (1970).

for immorality in teacher dismissal cases not involving sexual matters, many areas of teacher conduct continued to be treated as immoral before the courts.

In relation to defining immorality as a basis for teacher dismissal Kraus states 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.[24]

Again, in speaking to the issue of immorality as grounds for teacher dismissal, Bolmeier related immorality to community morals and projects an opinion. He maintains,

> 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.[25]

Continuing in his latest publication on sex litigation, Bolmeier speaks to the changing judiciary 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.[26]

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

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[24]Kenneth Kraus, "The Effect of the Stull Bill on Teacher Dismissals," Lincoln Law Review, IX (1974), 96.

[25]Bolmeier, Sex Litigation and the Public Schools, p. 5.

[26]Ibid.

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?[27]

"Whose morals should be enforced?" As Kraus has indicated, the problem clearly falls on the shoulders of the courts.

The preceding pages in this section have dealt with an examination of the nature and definition of immorality as reflected in current literature. A summary of this section is offered at the end of this chapter. The following section deals with a survey of current literature on the influence of the courts in educational matters.

Judicial Influence on School Boards and Policies

The preceding section of this study was concerned with the nature of "immorality" as a cause for teacher dismissal. The study shows wide disagreement on the term between school boards and teachers, with the judiciary intervening with increasing frequency on behalf of discharged teachers. 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 the 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 a recent article in the Journal of Educational Research,

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[27]Morrison v. State Board of Education, 461 P. 2d 375 at 384 (1969). (Footnote citing, 14 U.C.L.A. L. Rev. 581-582).

Stiles sees the courts as emerging policy-makers for the schools. He states, "In the changes that are taking place, the court is emerging as the key source of educational policy."[28] Although Stiles is speaking of general educational policy, his views include matters related to dismissal of teachers for immorality. He illustrates 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.[29]

In a similar vein, Hogan sees 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 states, "It is clear that a new judicial function is taking over," and then sets 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 supervision of the

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[28]Lindley J. Stiles, "Policy and Perspective," The Journal of Educational Research, 67 (March 1974), front inside cover.

[29]Ibid.

courts

(5) 1973- The stage of strict construction[30]

In an article designed primarily for school board members, M. Chester Nolte writes in a light vein on the issue of school boards' power in relation to the courts. He describes 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.[31] 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."[32]

Hudgins looks at board actions in recent teacher dismissal instances. From his analysis of court cases, Hudgins claims, "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."[33] Hudgins examines that "string of important cases" and sets forth ten commandments that "you better not break" in teacher dismissals.[34] Three of those commandments deal with

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[30]John C. Hogan, The Schools, The Courts, and the Public Interest (Lexington, Mass.: D. C. Heath and Company, 1974), pp. 5-6.

[31]M. Chester Nolte, "School Board Power and Its Three Cynical Categories," The American School Board Journal, 161 (Oct., 1974), p. 24.

[32]Ibid.

[33]H. C. Hudgins, "The Law and Teacher Dismissals: Ten Commandments You Better Not Break," Nation's Schools, 93 (March, 1974), p. 40.

[34]Ibid.

the area of immorality as a grounds 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.'"[35] Hudgins' first commandment is based on the Comings v. State Board of Education.[36] The second commandment is based on the decision of Burton v. Cascade School District,[37] and the third is based on Green v. Harrington.[38] All three cases are covered in chapter four of this study.

While Stiles, supra, sees the courts as a key source of educational policy, Hazard believes the courts "have taken over." He asserts: "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."[39] Hazard continues, "School board decisions are rarely accepted these days as the last word; more and more, citizens regard them as the trigger for legal confrontations."[40] Hazard cites the Hobsen v. Hansen case to illustrate the court's justification for

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[35]Ibid., pp. 40-43.

[36]Comings v. State Board of Education, 23 Cal. App. 3d 94, 100 Cal. Rptr. 73 (Calif. 1972).

[37]Burton v. Cascade School District, Union High School District No. 5, 353 F. Supp. 254 (Ore. 1973).

[38]Green v. Harrington, 487 S. W. 2d 612 (Ark. 1973).

[39]William R. Hazard, "Courts in the Saddle: School Boards Out," Phi Delta Kappan, 56 (Dec. 1974), p. 259.

[40]Ibid.

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.[41]

Although the Hobsen v. Hansen case, supra, dealt with school "tracking" rather than teacher dismissals, it illustrates the point that the courts are ready and willing, if reluctant, to intervene in school matters. This fact will be further supported by the treatment of cases in Chapter Four dealing with teacher dismissals for immoral causes.

Schimmel and Fischer, in support of the increasing involvement of the courts in school matters related to teacher dismissals, maintain that until recently teachers were certainly second-class citizens.[42] "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."[43] Schimmel and Fischer speak 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 assert:

> 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

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[41]Hobsen v. Hansen, 269 F. Supp. 401 (Wash., D. C. 1967), cited by William R. Hazard.

[42]David Schimmel and Louis Fischer, "On the Cutting Edge of the Law: The Expansion of Teachers' Rights," School Review, 82 (Feb. 1974), p. 262.

[43]Ibid., p. 262.

revocation of the Bill of Rights in the lives of teachers.[44]

Schimmel and Fischer examine 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."[45] 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.[46] 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 right 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) it substantially disrupts the educational process.[47]

(2) Freedom of speech outside the classroom was protected under Pickering

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[44]Ibid., p. 263.

[45]Ibid., pp. 263-279.

[46]Keefe v. Geanakos, 418 F. 2d 359 (Mass., 1969).

[47]Schimmel and Fischer, op. cit., pp. 265-266.

v. Board of Education.[48] The authors quote the Supreme Court in summing up the principle exemplified in the Pickering case: "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."[49]

(3) The teacher's personal life was protected under the Morrison v. Board of Education.[50] In the Morrison case the California Supreme Court stated, "Today's morals may be tomorrow's ancient and absurd customs."[51]

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.[52]

(4) Acts in the teacher's personal life were protected under the Finot v. Pasadena[53] case. This case merely involves 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."[54]

(5) Membership in controversial organizations was protected under the case of Keyishian v. Board of Regents.[55] The authors contend that, "This

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[48]Pickering v. Board of Education of Township High School District No. 205, 391 U. S. 563 (Ill. 1968).

[49]Schimmel and Fischer, op. cit., p. 262, citing Pickering v. Board of Education.

[50]Morrison v. State Board of Education, 1 Cal. App. 3d 214, 74 Cal. Rptr. 116 (1969).

[51]Ibid.

[52]Schimmel and Fischer, op. cit., p. 270.

[53]Finot v. Pasadena City Board of Education, 250 Cal. 2d 189, 58 Cal. Rptr. 520 (1967).

[54]Schimmel and Fischer, op. cit., p. 272.

[55]Keyishian v. Board of Regents, 385 U. S. 589 (N. Y. 1967).

means that no school board or state legislature could disqualify teachers for mere membership in any revolutionary, subversive, or extremist organization."[56]

(6) Cases dealing with equal protection of rights by race and sex are too numerous to enumerate here. However, Schimmel and Fischer see this area as an instance of significant gain for teachers' rights. They refer the reader to the Supreme Court decision in Bradley v. School Board of the City of Richmond.[57] 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.[58]

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

> 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 in favor of teachers, not school boards.[59]

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[56]Schimmel and Fischer, op. cit., p. 274.

[57]Bradley v. School Board of the City of Richmond, 382 U. S. 103 (Va., 1965).

[58]Davis, op. cit., p. 27.

[59]M. Chester Nolte, "Those Ugly Lawsuits and Why More Teachers are Using Them to Collect from Boardmen," American School Board Journal, 158 (Dec. 1970), p. 34.

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. Nolte addressed the three categories of school board power that boards have and can't use, but better be ready to go to court. His lightly sarcastic treatment of the topic represents a view of seriously deteriorated board power by the courts.

Stiles envisions a rapid decline in school board authority as the courts increasingly emerge as a key source of educational policy.

Hogan looks across the history of court intervention in school matters and sees the courts moving from a laissez-faire beginning to a "take-over" of the school board function today. He lists five stages of court evolution from laissez-faire to judicial "take-over."

Hudgins examines court cases in ten areas as basis for his "Ten Commandments" in teacher dismissals. His analysis and warnings give support to the contention that the courts are zealous in protecting teacher rights without regard to traditional school board functions.

Hazard, like Hogan, believes that his study of judicial actions evidences a take-over of the local control of the schools by the courts, along with the state and federal governments.

Schimmel and Fischer list six areas in which the courts have moved toward granting teachers full protection of the Constitution.

Davis, also, maintains that the courts are affording teachers more protection. And finally, Nolte declares the new judicial attitude is in favor of teachers, not school boards.

In summary the literature demonstrates a movement by the

judiciary from a hands-off attitude with great discretionary power granted to school boards to a hands-on attitude with school boards operating with a careful eye attuned to the courts.

The following section of this chapter examines the literature concerning significant court cases dealing with teacher dismissals for immoral causes.

The Literature on Immorality and Court Decisions

On the issue of teacher dismissal for immoral causes, the most comprehensive treatment in the literature was by Bolmeier,[60] Punke,[61] and Davis.[62] But all three writers treated immorality as one category in various treatises on the schools and the courts. Likewise, all three 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 states:

> The courts are called upon perennially to determine whether or not a school board's dismissal of teachers is legal. So many factors are involved in teacher-dismissal cases that it is impossible to lay down a single ruling defining the school board's legal latitude in the dismissal of teachers.[63]

However, Bolmeier maintains that, "Analysis of many court decisions in

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[60]Bolmeier, The School in the Legal Structure; also see Teachers' Rights, Restraints and Liabilities; and Landmark Supreme Court Decisions on Public School Issues.

[61]Punke, loc. cit.

[62]Davis, loc. cit.

[63]Bolmeier, The School in the Legal Structure, p. 193.

past cases do provide some legal principles which may serve as guides to school boards, and thereby minimize litigation."[64] Accordingly, he sets 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 verbatim:

> 1. A school board's power to dismiss a teacher may be derived from statute, or in the absence of statute, 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 statute 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.[65]

In speaking of immorality, Bolmeier declares, "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."[66] He

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[64]Ibid. [65]Ibid., p. 194 [66]Ibid., p. 196.

further claims, "The statutory power of a school board to discharge teachers is always freely construed and good cause includes any grounds which is put forth by (the) board in good faith."[67] He is 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 devotes a section to "Immorality as a Cause." Therein he treats two areas of immoral causes: (1) unorthodox behavior, and (2) the writing of letters. In relation to unorthdox behavior, he states:

> 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 decade, ago may be no longer so regarded.[68]

In relation to letter writings as an immoral cause, Bolmeier cites Jarvella v. Willoughby - Eastlake School District Board of Education as a case in point.[69] 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 or obscene writings in the light of other facts.[70]

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[67]Ibid., p. 196.

[68]Bolmeier, Teachers' Rights, Restraints and Liabilities, p. 21.

[69]Ibid., p. 23.

[70]Ibid.

In another publication of the same year, Bolmeier examines Landmark Supreme Court decisions on public school issues in a book by the same title.[71] Therein he analyzes 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.[72]

Bolmeier's newest publication, Sex Litigation and the Public Schools, in press at the time of this writing, devotes one chapter to the "Legal Limitations of Sex Behavior." He groups sexual misconduct into three categories of immorality: "Homosexuality", "Adulterous and other illicit acts", and "Bizarre cases of sexual behavior."[73] Each category is illustrated by several recent court cases. But since the cases used

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[71]Bolmeier, Landmark Supreme Court Decisions on Public School Issues (Charlottesville, Virginia: The Michie Company, 1973), pp. 104-145.

[72]Bolmeier, op. cit., p. 187, quoting Beilan v. Board of Education, 357 U.S. 399 (Penn., 1958).

[73]Ibid., pp. 40-64.

by Bolmeier will be treated in Chapter Four of this study, Bolmeier's analysis will not be discussed here. Suffice it to say here, perhaps 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."[74]

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

> 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.[75]

One chapter in Punke's book is devoted to "Immorality."[76] Like Davis' study, it is an examination of court cases dealing with teacher dismissal for immoral causes through 1970. The major importance of Punke's and Davis'[77] parallel studies is their classification of cases on immorality beyond sexual misconduct. Included in both studies as immorality are such acts as intoxication, gambling, cursing, fraud and deceit, family quarrels, financial irresponsibility, bad behavior in teaching sex education, notoriety, vulgarily, dishonesty, and criminal indictment.

An article in the North Dakota Law Review by Behling examines

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[74]Bolmeier, op. cit., p. 48, citing Erb v. State Board of Public Instruction, 216 N. W. 2d 339 (Iowa 1974).

[75]Punke, The Teacher and The Courts, p. 584.

[76]Ibid., pp. 584-594.

[77]Davis, op. cit., pp. 31-68.

the legal gravity of specific acts in cases of teacher dismissals.[78] In relation to dismissal for immoral causes, Behling lists 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, deal with rather old court decisions, the most recent case being decided in 1961, or fifteen years ago. It will be interesting to note the change in the stance of more recent court decisions as reflected in other literature in this study and in the examination of case law in Chapter Four.

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 provides 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.[79] All three examples are California

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[78]Herman E. Behling, Jr., "The Legal Gravity of Specific Acts in Cases of Teacher Dismissals," North Dakota Law Review, 43 (Summer 1967), 753-763.

[79]Blaine L. Carlton, "Pettit v. State Board of Education: Out-of-Classroom Misconduct as Grounds for Revocation of Teaching Credentials," Utah Law Review (Winter 1973), 797-807.

cases involving license revocation for immorality as specified in the state statutes, and each involves the principles of privacy and fitness to teach. Carlton draws two distinctions between Morrison in contrast to Pettit and Purifoy: the "criminality distinction" and the "privacy distinction." He concludes:

> 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 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.[80]

Carlton continues to speak on the issue of privacy. He states: "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."[81]

Ostrander deals 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.[82] From his analysis Ostrander asserts:

> . . . 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.[83]

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[80]Carlton, op. cit., p. 807.

[81]Ibid.

[82]Acanfora v. Board of Education of Montgomery County, 359 F. Supp. 843, 491 F. 2d 498 (Md. 1974).

[83]Kenneth H. Ostrander, "The Teacher's Duty to Privacy: Court Rulings in Sexual Deviancy Cases," Phi Delta Kappan 57 (Sept., 1975), 21.

He concludes: "Teachers whose nonconventional behaviors are practiced with discretion, particularly in the privacy of their own homes, will be protected by the courts."[84] Ostrander magnifies the concept, or principle, stated by the Acanfora court: "A duty to privacy." His brief conclusion to his article is worth quoting verbatim here:

> 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.[85]

Another article relating to a teacher's right to privacy was written by Walden in the Elementary School Principal.[86] Therein, Walden discusses the case of Drake v. Covington County Board of Education,[87] a case which turned on the nature of the school board's evidence and a citizen's right to privacy. Walden states that the Drake case, and others, suggests a difference between conduct that is "private" and conduct that is "public." In speaking to the issue of immorality, he maintains:

> 'Immorality' is easier to define when the prescribed 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.[88]

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[84]Ibid., p. 20

[85]Ibid., p. 22

[86]John C. Walden, "A Right to Privacy," Elementary School Principal, LIII (July-August 1974), 86-88.

[87]Drake v. Covington County Board of Education, CA. 4144-N, U.S.D.C., M.D. (Ala. 1974), cited by Walden.

[88]Walden, op. cit., p. 88.

Perhaps the most comprehensive treatment of teacher dismissal in the literature is found in the American Law Reports, Annotated.[89] 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." Therein, 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.[90]

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 to the statutues and circumstances involved.[91]

Another volume of the American Law Reports deals with the "Use of illegal drugs as grounds for dismissal of teachers . . ." The important legal principal 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.[92]

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[89]Leemoria Crawford and Asemo Nastos et al., 97 ALR 2d 828.

[90]Ibid., pp. 837-38.

[91]Ibid., p. 837.

[92]Don F. Vaccaro, 47 A.L.R. 3d 754.

In relation to the courts and teacher dismissals for immorality, a search of the Yearbook of School Law series reveals only scant treatment of the topic. The 1970 Yearbook[93] mentions only one case in the area of dismissal for immoral causes: Lombardo v. Board of Education. According to Garber and Reutter, the plaintiff's argument on degree of proof needed for the school board to dismiss him for improper relations with a girl student did not impress the court. Their quotation from the court record concerning degree of proof needed for board dismissal of teachers illustrates a significant legal principle:

> It is the contention of the plaintiff on this appeal that the evidence to sustain the decision of the Board must be strong and convincing, akin to that required in criminal cases. We do not know of any Illinois case supporting this contention, nor has any case so holding been brought to our attention. We decline the suggestion to so hold.[94]

The 1971 Yearbook of School Law[95] lists only one court case related to immorality and teacher dismissal, the landmark case of Morrison v. State Board of Education. Garber and Seitz quote much of the court language verbatim, without editorial comment. However, one important point they lift from the language of the Morrison court relates immorality to fitness to teach. In their words,

> The court concluded by stressing that it was not saying that homosexuals must be permitted to teach in the public schools of California. It was requiring only that the board properly find that an

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[93]Lee O. Garber and E. Edmund Reutter, Jr., The Yearbook of School Law (Danville, Ill.: The Interstate Printers and Publishers, Inc., 1970).

[94]Garber and Reutter, op. cit., p. 238, citing Lombardo v. Board of Education.

[95]Lee O. Garber and Reynolds C. Seitz, The Yearbook of School Law (Danville, Ill.: The Interstate Printers and Publishers, 1971).

individual is not fit to teach.[96]

Robert E. Phay discusses one court case dealing with teacher dismissal for immorality in the 1973 Yearbook of School Law.[97] The example case was Fisher v. Snyder in which the court overruled the dismissal. The court drew upon Griswold v. Connecticut in finding the dismissal to be an infringement on the teacher's right of free association and privacy. According to Phay's interpretation of the ruling, the court ". . . recognized the board's right to inquire into a teacher's personal associations . . . but noted that making inquiry is different from using impermissable inferences from the inquiry."[98] The same case and legal principle were treated in the 1974 Yearbook of School Law[99] by Delon under the section entitled, "Immorality." Based on the Fisher v. Snyder case he states:

> The court, in affirming that a school board may legitimately inquire into the character and integrity of its teachers, held that it may not dismiss a teacher for arbitrary or capricious reasons.[100]

A New York case involving a teacher who was convicted of a felony is treated in the 1975 Yearbook of School Law[101] under the heading,

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[96]Garber and Seitz, op. cit., p. 203, citing Morrison v. State Board of Education.

[97]Robert E. Phay, ed., The Yearbook of School Law (Topeka, Kansas: National Organization on Legal Problems of Education, 1973).

[98]Phay, op. cit., p. 107, citing Griswold v. Connecticut.

[99]Floyd G. Delon, ed., The Yearbook of School Law (Topeka, Kansas: National Organization on Legal Problems of Education, 1974).

[100]Delon, op. cit., p. 91, citing Fisher v. Snyder.

[101]Philip K. Piele, ed., The Yearbook of School Law (Topeka, Kansas: National Organization on Legal Problems of Education, 1975).

"Unprofessional Conduct." Since the behavior of the discharged teacher in the instant case could have been classified as immoral in other states, the legal point made by Piele is pertinent to this study. Citing the case of Pordum v. Board of Regents, Piele states:

> In the opinion of the court the extraordinary state interest in protecting the impressionability of elementary school students overrides significant property interest. Each plea of overbreadth, equal protection, and vagueness was overruled in the affirmation of the lower court holding.[102]

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."[103] Hoffman speaks to the increased volume of litigation initiated by teachers by alluding to different role perspectives and reasons for the change in teacher rights. He maintains:

> 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.[104]

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

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[102]Piele, op. cit., p. 163, citing Pordum v. Board of Regents.

[103]Newton Edwards, The Court and the Public Schools (Chicago: The University of Chicago Press, 1968), p. 504.

[104]Earl Hoffman, "Are Teachers Citizens of Their Communities?" School Management, Vol. 16 (1972), 10.

teachers.[105] In summary, Hoffman asserts: "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."[106]

The literature and the examination of court cases in Chapter Four of this study indicates a large part of the immorality cases deal with homosexuality. Nolte raises a note of caution in dealing with "gay" teachers in the classroom. He asserts:

> 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.[107]

In Nolte's advice to school boards concerning contemplated dismissal of a homosexual teacher, he states, "His (the teacher) being homosexual (even self-proclaimed) generally is not cause for firing a gay teacher."[108]

Nolte examines the Wood v. Strickland case and advises 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 declares: "School boards seldom get into trouble when they exercise their legislative or administrative powers.

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[105]Ibid., p. 10.

[106]Ibid.

[107]M. Chester Nolte, "Gay Teachers: The March from Closet to Classroom," The American School Board Journal, Vol. 160 (July 1973), 29.

[108]Ibid., p. 30.

It's when they act as judicial bodies that they so often land in court--and lose."[109]

SUMMARY OF THE LITERATURE

The literature indicates that 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 are suing 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 the courts attempt to define morality. Both the philosophers and the courts 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 are in a state of flux or there exist many subcultural mores rather than a common set of mores and a common morality. The courts have said that morality is inseparable from conduct and that "immorality" is conduct hostile to the general public. Likewise, the courts have broadened the term "immorality" to encompass many types of teacher behavior beyond those which are sexual in nature.

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[108]M. Chester Nolte, "How to Survive the Supreme Court's Momentous New Strictures on School People," The American School Board Journal 163 (May 1975), 52.

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

According to the literature the courts have evolved from a laissez-faire stance toward intervention in school issues to a position of strict construction. Two writers view the present involvement of the judiciary in school matters as a "take-over", which leaves school boards with little authority in dismissal cases. In one case the courts justify its involvement in school cases by stating that it is the duty of the judiciary to lend a hand when constitutional rights hang in the balance.

School boards are caught in a dilemma. They have power they cannot use; power they do not have but insist on using; and power they do have and can use but better be ready to justify its use in court.

The literature further indicates 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 the 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 offers twelve such guidelines, or legal principles. But due to changing social values and revolutionized attitudes toward sex, judicial precedence may not be dependable.

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. At this point in time it is not clear whether the state's interest in maintaining the quality of its teachers and the moral integrity of its schools is sufficiently compelling to override the teacher's right to privacy. 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 literature shows that 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 that 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 life style but cannot use impermissable inferences from such inquiry. Nor can boards dismiss teachers for arbitrary or capricious reasons.

Hoffman maintains that 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. The school boards and the courts are caught in the middle of the conflict. 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 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. The literature further indicates that individual perceptions of immorality are so diverse that the courts are involved perennially to decide 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 chapter deals with the examination and analysis of the fifty state statutes to determine legislative provisions for dismissal of teachers who are charged with immoral conduct.

CHAPTER III

ANALYSIS OF STATE STATUTES ON IMMORALITY

This chapter deals with the question under the statement of the problem in Chapter One: "What is the status of statutory law related to teacher dismissal for immoral causes?"

The purpose of this chapter is to examine the education codes of the fifty state statutes to determine the degree of legislative concern for the morality of public school teachers and the statutory provisions for removal from office those teachers charged with moral misconduct, or immorality.

When looking at the term "immorality" in the state statutes, immorality is listed as a grounds for dismissal more often than any other cause. When the term "immorality" is considered as a term that includes other similar terms such as "immoral conduct," "moral turpitude," "moral unfitness," "unworthiness to instruct children," and "just cause," all fifty states cover immorality as a cause for dismissal. In addition to immorality as a cause, most states list other terms that could cover the area also. "Good cause," or its equivalent, is the most frequently mentioned catch-all term built into most statutes as a safeguard against undesirable teacher actions, including immorality. It is evident from the statutes that the legislative bodies of the fifty states consider teacher morality to be of prime importance.

According to an earlier survey based on state statutes through

1970,[1] there has been movement toward more states including immorality as a statutory basis for teacher dismissal. In an unpublished dissertation Davis found that thirty-seven states listed immorality as a cause for dismissal in 1970. It is not known whether Davis considered immorality in its narrowest context or whether the term "immorality" included the various other phrasings of the concept. Assuming Davis used immorality in its broadest sense, and assuming the survey to be an accurate one, the present examination finds that only two states have added "immorality" as a grounds for teacher dismissal within the last five years.

The fact that all states have broad statutory provisions for dealing with the immoral conduct of teachers demonstrates the breadth of legislative concern. It is equally interesting to note the depth, or degree, of concern. Table I reflects the following: forty states list immorality as a grounds for dismissal; thirty-two states list immorality as grounds for revocation of teaching license or certificate; and nine states make revocation mandatory if immoral "cause" is substantiated or if a teacher is convicted of a crime involving moral turpitude. In only eight of the states are the statutes silent on immorality. In each such case, however, the issue is covered by the term "good and just" or "sufficient and due cause" except Vermont which uses the term "conduct unbecoming a teacher."

Only one state, Alaska, defines "immorality" in its state statutes. In that instance immorality is limited to the commission of an act which under the laws of the state constitute a crime involving moral turpitude.

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[1]Davis, "Immorality and Insubordination in Teacher Dismissals," loc. cit.

TABLE I

STATE LISTING GOOD CAUSE AND IMMORALITY AS GROUNDS FOR TEACHER DISMISSAL, LICENSE REVOCATION, AND MANDATORY REVOCATION

State	Just Cause	IMMORALITY		
	Dismissal and/or Revocation	Dismissal	Possible Revocation	Revocation Mandatory
Alabama	X	X	X	X*
Alaska		X*	X*	
Arizona	X	X	X	
Arkansas	X			
California	X	X	X	X*
Colorado		X	X	
Connecticut	X	X	X*	
Delaware		X	X	
Florida		X	X	
Georgia	X	X	X	
Hawaii		X	X	
Idaho		X*	X*	
Illinois	X	X	X	
Indiana		X	X	
Iowa	X			
Kansas	X			
Kentucky		X	X	
Louisiana		X	X	
Maine	X	X		
Maryland		X		
Massachusetts	X			
Michigan	X			
Minnesota		X	X	
Mississippi		X		
Missouri		X	X	
Montana		X		
Nebraska		X	X	
Nevada				X*
New Hampshire	X	X		
New Jersey	X			
New Mexico	X		X	
New York	X	X		
North Carolina		X		
North Dakota	X	X	X	X
Ohio		X	X	X*
Oklahoma		X	X	
Oregon		X	X	X
Pennsylvania		X	X	
Rhode Island	X			
South Carolina	X	X	X	
South Dakota		X	X*	X*
Tennessee		X**		
Texas	X	X	X***	
Utah		X	X	X
Vermont				
Virginia		X		
Washington		X	X	
Wisconsin		X	X	
West Virginia		X	X	
Wyoming		X	X	
TOTALS	20	40	32	9

*Crimes involving moral turpitude
**Immorality contained in conduct unbecoming a teacher
***Unworthiness to instruct children

A close examination of the fifty state statutes reveals a myriad of legal terms listed as grounds for teacher dismissal. In addition to immorality, the leading cause, many of the other terms used would suffice for the same purpose. The "just cause" phrase covers the entire spectrum of stated grounds for dismissal since cause must be substantiated in any case. Table II shows the range and nature of terms used in the statutes as grounds for teacher dismissal. Among the twenty-eight categories shown in Table II, some minor grouping has been done to bring the list within manageable proportions.

Analysis of the statutory terms as provided in Table II reveals a legal semantical problem and a great deal of overlapping of areas by different causal terms. Although a wide range of language is used to acccomplish a common purpose, the fact becomes evident that across the nation the various legislatures concerned themselves with five board areas of teacher conduct: (1) immoral behavior and attitudes, (2) inadequate performance, (3) deviant behavior, (4) violation of laws and regulations, and (5) dishonesty and deceit. All of the terms used in statutes as grounds for dismissal are grouped under the five general categories in Table III. Under the five groupings shown in Table III dismissal of teachers for immoral acts could be covered by at least nineteen statutory terms.

In most states school boards have a choice of categories or terms under which a teacher might be charged, ranging from due cause on the one hand to immorality on the opposite end of the range, with immorality being the more stigmatic charge. It is interesting to note at this point that the Alaska court spoke to the nature of the charge of immorality as compared with other possibilities. The Supreme Court of

TABLE II

ENUMERATED GROUNDS FOR TEACHER DISMISSALS AND LICENSE REVOCATIONS IN THE FIFTY STATE STATUTES

Grounds	Dismissal	Revocation
Immorality[a]	43	34
Incompetency	33	18
Neglect of Duty[b]	25	16
Good Cause[c]	21	8*
Violation of School Regulations & Policies[d]	17	4
Insubordination	16	2
Incapacity[e]	16	4
Violation of Laws of the State[f]	14	11
Inefficiency	13	1
Violation of Contract[g]	10	10
Evident Unfitness[h]	9	7
Intemperance[i]	9	8
Unprofessional Conduct	9	7
Conduct Unbecoming a Teacher	8	1
Cruelty	7	6
Misconduct in Office	4	2
Failure to Carry Out Duties	3	1
Violation of Professional Standards	3	2
Advocating Overthrow of Government	2	1
Falsification of Records	2	2
Deceit and Fraud in Securing Certificate	2	2
Dishonesty	2	1
Disloyalty[j]	2	2
Habitual Use of Drugs and Narcotics	2	2
Membership in Illegal Organizations	2	
Profanity	1	1
Criminal Syndication	1	
Brutal Treatment	1	

[a]Immorality includes such other terms as moral misconduct, immoral character, moral turpitude, and sex offenses.

[b]Neglect of duty includes gross neglect, inattention to duty, neglect of business of the school, and services unprofitable to the school.

[c]Good cause includes good and just cause, due cause, sufficient cause.

[d]Violation of regulations and policies includes violation of title of office and duties, willful violation of regulations and non-compliance of school policies, rules and regulations.

[e]Incapacity includes physical and mental disability and mental derangement

[f]Violation of laws of the state include criminal conviction of acts involving moral turpitude.

[g]Violation of contracts includes breach of contract.

[h]Evident unfitness evident unworthiness and morally unfit.

[i]Intemperance includes drunkeness.

[j]Disloyalty includes teaching disloyalty.

TABLE III

THE FIVE BROAD CATEGORIES OF LEGISLATIVE CONCERN IN TEACHER DISMISSAL STATUTES

Immoral Behavior and Attitudes	Inadequate Performance	Deviant Behavior	Dishonesty and Deceit	Violation of Laws and Policies
Immorality	Inefficiency	Unprofessional conduct	Falsification of records	Commission of crime
Moral turpitude	Neglect of duty	Conduct unbecoming a teacher	Dishonesty	Membership in organization not allowed by laws
Morally unfit to teach	Physical incapcity	Misconduct in office	Disloyalty	Use of drugs and narcotics
Evident unfitness	Mental incapacity	Willful violation of regulations	Teaching disloyalty	Brutal treatment
Sex offenses	Cruelty to children	Violation of contract	Fraud and deceit in certification	Advocating the overthrow of the government
Felony conviction	Failure to carry out rules and regulations	Noncompliance with school rules	Due-just-good cause	Moral turpitude
Commission of crime	Neglect of business of school	Negligence		Good-just-due cause
Criminal syndication	Noncompliance with school rules	Breach of contract		
Unprofessional conduct	Inadequate performance	Profanity		
Conduct unbecoming a teacher	Mental derangement	Inattention to duty		
Incompetency	Negligence	Services unprofitable		
Intemperance	Persistent negligence	Evident unfitness		
Drunkedness	Inattention to duty	Brutal treatment		
Use of drugs	Services unprofitable to the school	Dishonesty		
Dishonesty	Failure to perform customary duties	Disloyalty		
Disloyalty	Good-just-due cause	Teaching disloyalty		
Teaching disloyalty		Good-just-due cause		
Good-just-due cause				

Alaska suggested that "conduct unbecoming a teacher" be used as grounds for teacher dismissal because it would serve the same purpose without stigmatizing the victim with a charge that in the minds of many denotes sexual misconduct:

> . . . immorality should be removed from the catch-all definition of conduct and a designation such as "conduct unbecoming a teacher" be substituted. The definition would then cover immorality in all its aspects, including all shades of unacceptable social behavior and would continue to serve the useful purpose of a "catch-all" clause which so many states have found to be necessary in this area of litigation.[2]

But whatever charge selected, the burden of proof rests with the local employing authority. And whatever the charge, cause has to be substantiated by the school board and its agents. The courts have spoken to the issue of "fair warning" in the statutes so that teachers could be forewarned of prohibited teacher conduct, or precisely what was expected of them. Accordingly, the courts have nullified state statutes for vagueness of the term "immorality," yet only one state has defined immorality in its statutes. For example: in the opinion of a United States District Court, the Oregon statutes in 1973 were too vague to classify homosexuality as being immoral. According to the court in Burton v. Cascade School District,[3] the statute was void for vagueness.

> This statute vests in the school board the power to dismiss teachers for immorality. However, the statute does not define immorality. Immorality means different things to different people and its definition depends on the idiosyncracies of the individual school board members. It may be applied so broadly that every teacher in the state could be subject to discipline. The potential for arbitrary and discriminatory enforcement is inherent in such a statute.
>
> A statute so broad makes those charged with its enforcement the

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[2]Watts v. Seward School Board, 395 p. 2d 591 (Alaska 1964), p. 592.

[3]Burton v. Cascade School District, Union High School No. 5, 353 F. Supp. 254 (Ore. 1973).

> arbiters of morality for the entire community. In doing so, it subjects the livelihood of every teacher to the irrationality and irregularity of such judgments. The statute is vague because it fails to give fair warning of what conduct is prohibited and because it permits erratic and prejudiced exercises of authority.[4]

The two court cases from Alaska and Oregon were cited here as examples of the language two courts have used in speaking to the state statutes on immorality as grounds for dismissal for license revocation. In examining the statutes of those respective states, the impact of the courts is evident in subsequent statutory language. Alaska defines immorality as: "commission of an act which under the laws of the state constitute moral turpitude."[5] Therefore, immorality is narrowed to specific acts under the penal code and not subject to school board determination of what constitutes immorality. Oregon statutes no longer carry "immorality" as a grounds for license revocation but use several other terms which cover the ground equally well: "conviction of a crime," "gross neglect of duty," "any gross unfitness" . . .. Interestingly, Oregon lists several crimes for which the violation of shall require revocation of licenses: public indecency, accosting for deviate purposes, rape, sodomy, various forms of sexual abuse, sexual misconduct, bigamy, incest, prostitution, furnishing obscene materials to minors.[6] In the first listing above, the statutes indicate that the state may revoke certificates for the enumerated causes, most of which cover immoral conduct. But turning to the moral misconduct of a more serious nature, the legislature defined immorality by making it a crime to commit

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[4]Ibid., p. 255.

[5]Oregon Revised Statutes, Article 342, Section 342.175 (1973).

[6]Ibid.

certain immoral acts and for which convictions of shall require license revocation. Note the different language "may revoke" in the first case and "shall require revocation" in the latter case.

Examination of the statutes reveals a consistent concern for the moral conduct of teachers and various attempts to control behavior in private life as well as in the classroom. But perhaps the most significant observation is the degree of statutory safeguards for the protection of "due process" rights of teachers in dismissal cases. Although examination of procedural "due process" is outside the scope of this study, it is worth mentioning here. In light of much recent litigation concerning the constitutional right to due process, most states have included in their statutes intricate and detailed procedural steps to be followed in dismissal cases. Some states repealed their former "grounds for dismissal" and replaced them with due process legislation. Kansas is a state in point.[7] Other states kept immorality as a grounds for dismissal in addition to due process legislation. North Carolina is a state in point. Many states have established through the statutes professional practices commissions, or their equivalents, to deal with teacher dismissal charges and to guarantee due process in such matters. Chapter Five will treat the degree of professional practices commissions. Also, in some states, such as Kansas, the state board of education requires each school district to file a code of conduct for school personnel.[8]

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[7]Kansas Statutes Annotated, Article 72, Section 72-1383 and 72-5405 (1974).

[8]Ibid.

It seems evident that these movements by state legislatures are an attempt to bring a degree of consistency to the discipline of teachers and some agreement on acceptable grounds and conditions for termination of employment while protecting the constitutional rights of teachers. It would seem, too, that such movements are intended to protect teachers from arbitrary and capricious dismissals by school boards while providing boards and school officials some guidelines when dismissal charges are anticipated.

SUMMARY

This chapter has dealt with an analysis of the fifty state statutes to determine the status of statutory law dealing with the issue of teacher dismissal for immoral causes. Although this chapter deals with statutory law, it is done in full recognition of the fact that statutes are not law until they stand the test of court review. School boards operate under the umbrella of the state education codes as their source of authority. And until a particular statute is struck down by the courts, it carries the full force of law.

The language of the various state statutes demonstrates the fact that all fifty of the state legislative bodies are concerned foremost with the moral fiber and conduct of public school teachers. Although all states do not list immorality as a grounds for dismissal, all states have statutory provisions to cover the ground. The data from the study shown in Table III indicate that at least nineteen terms could be used to cover the concept of immorality in teacher dismissals. The statutes reveal the breadth and depth of concern for teacher morals. Forty states list immorality as a cause directly, or indirectly, as a cause under such headings as conduct unbecoming a teacher or unfitness to teach.

Table I indicates that thirty-four states may revoke certificates for immorality, but nine states go beyond the permissive language to state that revocation is mandatory in immorality dismissals, usually limited to cases involving moral turpitude. Only one state is silent on immorality and "just cause." In that state immorality is covered under "conduct unbecoming a teacher."

The statutes reflect the impact of recent court decisions concerning the nature of the charge of immorality, the vagueness of the term "immorality," and the concern of the courts in protecting the constitutional right to due process. Alaska and Oregon are used as cases in point.

Examination of the statutes reveals that most states have built in statutory provisions for guaranteeing procedural due process for teachers through detailed plans, professional practices commissions, and codes of conduct.

The statutes reflect a trend toward greater protection for teachers from unfair dismissals and a trend toward less discretion by local school boards in determining grounds for dismissal, especially in terms of immorality as a cause for dismissal.

The following chapter of this study will seek to determine if judicial review of teacher dismissals exhibits a similar trend toward greater protection for teachers in immorality cases, and whether any legal principles and court trends can be identified and projected as guidelines for teachers and school boards in dismissal situations.

CHAPTER IV

REVIEW OF COURT CASES

The language of the statutes in the fifty states varies widely from great particularity to gross generality. However, it reflects a common concern for the moral fiber of teachers and provisions for removal of teachers whose conduct is considered immoral. Accordingly, more states list immorality as a ground for dismissal and license revocation of teachers than any other single cause. But since there may be a plurality or moralities, whose morals shall prevail?

The Supreme Court of Louisiana 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.[1]

Other court actions have implied that morality or immorality is relative to circumstances, place, and time. The Hobsen 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.[2] Thus,

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[1]State v. Truby, 211 La. 178, 29 So. 2d 758 at 765 (La. 1947).

[2]Hobsen v. Hansen, 269 F. Supp. 401 (Washington, D. C. 1967).

the stage for litigation is set.

In this chapter an attempt is made, through analysis of selected court cases, to determine if immorality is relative; if so, relative to what factors or situations. A further purpose is to determine to what degree the courts have lent a hand in the solution or clarification of problems related to teacher dismissals for immoral causes.

INTRODUCTION AND OVERVIEW

The court reports show that the number of lawsuits involving teacher dismissals during the period of time from 1939-1975 is great, indeed. The number of cases on immorality dismissals alone is too large to treat in this study. Accordingly, cases are selected for examination according to three criteria: (1) the case must be 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 statutues; (2) the case must be recent. Most cases in the period of 1969-1975 are treated in greater detail than earlier cases, since the cases through 1969 have been treated in other studies. 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 demonstrate 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 study because the landmark case of Horosko v. School District of Mt. Pleasant[3] 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 the teacher laid down certain constitutional rights in accepting the position of teacher, and that as an exemplar of moral conduct before children and the community, his private as well as public conduct was subject to close scrutiny and board control. Two decades after Horosko, the influence of the Horosko principle, although waning, was still evident in Beilan v. Board of Education.[4] 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."[5]

The case of Pickering v. Board of Education[6] decided before the United States Supreme Court in 1968, although not based on the charge of immorality, clearly established that the teacher is also a man, a citizen with certain constitutional rights that could not be laid down at the school house door--the right to freedom of speech and dissent outside the

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[3]Horosko v. School District of Mount Pleasant Township, 335 Pa. 369, 6 A. 2d 866 (Pa. 1939).

[4]Beilan v. Board of Education, 357 U. S. 399 (Pa., 1958).

[5]Ibid., p. 358.

[6]Pickering v. Board of Education of Township High School District No. 205, 391 U. S. 563 (Ill. 1968).

classroom.

The following year, 1969, in Morrison v. State Board of Education[7] the court declared, in essence, that the teacher has a right to privacy and that unless the alleged immoral act can be proven to adversely affect the teacher-student relationship, dismissal will not survive strict judicial scrutiny. Thus, Morrison established the principle of nexus between private acts and classroom. In this study, hardly a case was examined that did not cite Morrison. And the list of citations found under Morrison in Shepard's Citations[8] is extensive, indeed. Morrison promises to affect this decade as Horosko affected the three previous ones.

A study of judicial actions and a survey of the literature show that Pickering and Morrison, plus several interim federal cases on procedural due process guarantees, have all but dealt the death blow to the Horosko principle.

Finally Monge v. Beebe Rubber Company[9] in 1974, although not a school case, and Andrews v. Drew Municipal Separate School District[10] in 1975 have completed the emancipation of teachers. Although it is too early to determine the overall impact of Monge and Andrews, the principle in the two cases promises to be significant in the protection of teachers. Basically, Monge abrogated the principle that the employer's power

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[7]Morrison v. State Board of Education, 1 Cal. 3d 214, 461 P. 2d 375, 81 Cal. Rptr. 175 (Calif. 1969).

[8]Shepard's Reporter Citations, Colorado Springs, Colorado.

[9]Monge v. Beebe Rubber Company, 316 A. 2d 549 (N. H. 1974).

[10]Andrews v. Drew Municipal Separate School District, 507 F. 2d 611 (Miss. 1975).

to discharge is absolute. And Andrews established the principle that teachers and teacher aides cannot be dismissed or discriminated against through policies against unwed mothers or immoral acts in the past.

The examination of the court cases in this chapter reveals a challenge of school board and statutory authority as well as a challenge of community standards of morality. Perhaps the widespread use of the term "alternative life style" is a euphemism that has replaced the term "immorality" to describe, in a non-judgmental fashion, divergent behaviors of today. Perhaps, also, teachers are swept into the vortex of a social evolution, or revolution, characterized as an age of "predatory individualism"[11]--an era in which everyone does "his own thing" without thought of long term consequences or traditional cultural constraints. The court cases examined in this study appear to support the above statements. Surely, the courts today place a high value on the individual and his constitutional rights as against the broader social welfare.

In the following cases an attempt is made to offer enough narrative to capture the detailed flavor of each case in simple language. Direct quotations are made where the language of the court is particularly significant in point, legal principle, or eloquence.

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[11]Note: The term "predatory individualism" is a term borrowed from Dr. Hines' "competitive predatory individualism" and used to convey a slightly different concept therein. Dr. Hines uses the term in the following respect: ". . . social change in our times has permitted the persistence of predatory individualism . . . which becomes a socially lethal practice in the hands of people who have just escaped some traditional controls and gained access to new forms of social power." (From an address before the Seminar in Educational Leadership at the University of North Carolina at Greensboro, February 5, 1971, by Dr. Joseph Hines, Professor of Sociology and Anthropology, University of North Carolina at Greensboro.)

CATEGORIZATION OF IMMORALITY CASES

For the sake of clarity and over-all perspective, the cases treated in this study are categorized into five major groupings according to the following outline:

1. General Immorality
   a. Drinking in Public
   b. Willful Concealment of Facts
   c. Profanity and Anger
   d. Vulgarity
   e. Insubordination

2. Homosexuality
   a. Homosexual Conduct in Former Years
   b. Admitted Homosexuality
   c. Promoting "Gay Life"
   d. Oral Copulation
   e. Lewd Act Involving Minor
   f. Transsexualism

3. Sexual Misconduct Other Than Homosexuality
   a. Fornication Involving Adult Student
   b. Fornication Involving Minor
   c. Fornication Involving Former Student
   d. Diverse Sexual Misconduct
   e. Lewd Public Fantasying
   f. Cohabitation
   g. Unwed Motherhood
   h. Masturbation
   i. Adultery

4. Alleged Improper Classroom Behavior
   a. Vulgarity
   b. Obscene Classwork
   c. Obscene Teacher Theme
   d. Promoting Diverse Life Style
   e. Use of Obscene Literature
   f. Offensive Language and Punishment
   g. Gun in Classroom

5. Nonsexual Criminal Offenses
   a. Conspiracy to Bribe
   b. Possession of Marijuana
   c. Shoplifting
   d. Public Intoxication
   e. Falsification of Records
   f. Lying

THE IMMORALITY CASES

General Immorality

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

This immorality case 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) due to 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 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 occasion 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 speaks 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 indicates 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 are reflected in teacher dismissal litigation for at least three decades following Horosko, and to some extent even today.

Willful Concealment of Facts. Negrich v. Dade County Board of Public Instruction, 143 So. 2d 498 (Fla. 1962).

A very controversial dismissal for immorality arose from an incident that began fourteen years after the Horosko decision. In 1953 Negrich applied for a teaching position in the Dade County Schools. On his application he falsely stated that he was an American citizen. He repeated the concealment when he signed the required loyalty oath. He was employed and began teaching in 1954. He acquired permanent teacher status in 1957. In 1960 Negrich became a citizen of the United States by naturalization. But two months prior to his acquiring citizenship, the school board learned of Negrich's deception and notified him that he was discharged for his misrepresentation. Negrich appealed, and the circuit court denied his appeal. On appeal to the District Court of Appeal, Negrich contended that falsifying his records did not constitute "immorality."

The court disagreed. In affirmation of the lower court decision the court held:

> Letter by Superintendent of Schools to teacher stated that teacher was being suspended on ground that he falsified his records to obtain a position was sufficient to charge teacher with immorality as a ground for suspension and dismissal under statute although word

'immorality' was not used in written charge against teacher. (Id. at 499.)

Profanity and Disrespect. Mackenzie v. School Committee of Ipswich, 342 Mass. 612, 174 N.E. 2d 657 (Mass. 1961).

Massachusetts statutes do not list "immorality" as a cause for dismissal. Accordingly, in 1961 a teacher was dismissed for "conduct unbecoming a teacher" for an act of misconduct similar to others of that period in other states that were classified as "immorality",[12] "unprofessional conduct",[13] "neglect of duty."[14]

Mackenzie was a teacher in Massachusetts with twenty-three years of exemplary service. She had experienced some disagreement with the superintendent and was, accordingly, requested to attend a special board meeting. She did so with her attorney. In the heat of the meeting, she was heard to call the superintendent a "son of a bitch." Although the teacher's utterance was in a low voice while her head was turned away from the superintendent, at least three persons understood her words. The teacher was forthright discharged. She appealed the board's dismissal. The Superior Court denied relief.

The Supreme Judicial Court of Massachusetts explained that the fact that the teacher's past conduct was otherwise exemplary did not prevent the school committee from dismissing teacher for isolated act:

> . . . the lower court's finding that the teacher's utterance was improper and unbecoming is 'plainly justified, if not required.' (Id. at 661.)

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[12]Watts v. Seward, 454 P. 2d 732 (Alaska, 1969).

[13]Hall v. Colley, 277 Ky. 429, 126 S.W. 2d 811 (Ky., 1939).

[14]Moffett v. Calcasieu Parish School Board, 179 So. 2d 537 (La., 1965).

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 foul 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 to the courts 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, in this case we can see the waning of the Horosko influence and the beginning of a foundation for the Morrison decision to follow. In essence this case begins to dissolve the earlier court tendencies to

impose moral standards of the community upon teachers as a condition of employment.

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 involves 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 amount the following year.

Further, the teachers tried to organize the union and the teachers' association behind their cause. Many other charges leveled against the superintendent tended to stress his "disctatorial" 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 case was remanded back from the United States Supreme Court once, certiorari was denied once, 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 the individual concerned or the teaching profession into 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.

The five cases treated in the preceding pages of this section were presented to provide a sweeping overview of the general nature of immorality during the period 1939 through 1969 under the influence of the Horosko doctrine. Jarvella in 1967 and Pickering in 1968 had momentous impact on the diminishing Horosko influence. The upcoming Morrison case in 1969 began a new era in court decisions concerning teacher dismissals.

Homosexuality

Homosexual Conduct in Former Years. Morrison v. State Board of Education, 74 Cal. Rptr. 116, 461 P. 2d 375 (Calif. 1969).

A 1969 California case has become a milestone in sexual immorality dismissal cases. The court record reveals that while Morrison was a teacher in the Lowell Joint School District he gave counsel and advice to a fellow teacher and his wife who were entangled in marital and financial difficulties. During a visit by the friend to Morrison's apartment the two men engaged in a limited, non-criminal physical relationship which Morrison described as being of a homosexual nature. Although the court record does not reveal the details of the homosexual act in question, it does state that it was neither sodomy, oral copulation, public solicitation of lewd acts, exhibitionism, nor loitering near public

toilets. A year later the other teacher involved reported the incident to the superintendent of the Lowell Joint School District. Morrison resigned, and later the California State Board of Education revoked his teaching certificate.

Morrison petitioned for a writ of mandamus to prevent the state from revoking his life diploma to teach children because of his homosexual act.

The superior court held that the act did not constitute a crime under California law, but that the teacher's homosexual act was immoral and unprofessional within the Education Code, which authorized revocation of the teacher's certificate.

In affirming the lower court judgment, the Court of Appeals placed little importance on the question of whether the petitioner's homosexual act affected in any way his teaching performance.

The court said:

> There is no direct evidence that the acts complained of or the homosexual character of petitioner did in any manner affect petitioner's capacity, ability and willingness to perform in a satisfactory manner as a teacher or had any effect at any time on any pupils taught by him. In our view the lack of such evidence is not significant. The school board has a legitimate interest in maintaining the integrity of the schools against potential influences on impressionable pupils who may be influenced by the conduct of its teachers outside the classroom. (Cal. Rptr. Id. at 118.)
> . . . We have before us the question of whether a homosexual is more dangerous to children than a heterosexual. We decide only that conduct of one or the other found to be immoral within the meaning of the code section is sufficient ground for discharge. (Id. at 120.)

On further appeal, the Supreme Court of California looked at the required nexus between teacher conduct and classroom performance through a review of many court cases dealing with immorality and fitness to teach. In reversing the judgments of the lower courts, the Supreme Court said:

> We cannot believe the Legislature intended to compel disciplinary measures against teachers who committed such peccadillos if such passing conduct did not affect students or fellow teachers. (P. 2d, Id. at 183).

The California Supreme Court found for Morrison and returned the case to the superior court for proceedings with its opinion. In the opinion of the court:

> Terms such as "immoral or unprofessional conduct" or "moral turpitude" stretch over so wide a range that they embrace an unlimited area of conduct. In using them the legislature surely did not mean to endow the employing agency with the power to dismiss any employer whose personal, private conduct incurred its disapproval. Hence the courts have consistently related the terms to the issue of whether, when applied to the performance of the employee on the job, the employee has disqualified himself. (Id. at 184).

Thus, in this instance, the teacher had not disqualified himself. The act was private and attracted no notoriety, it was non-criminal in nature, and it was removed in time. These three factors will be seen as criteria for determining immorality in many further cases.

Admitted Homosexuality. Burton v. Cascade School District, Union High School No. 5, 353 F. Supp. 254 (Ore. 1973).

Peggy Burton was in her second year of teaching at the Cascade High School when her principal learned through the mother of a student that she was a homosexual. After Burton acknowledged that she was a homosexual, the Cascade School Board dismissed her in accordance with the Oregon Statutes which stated in part that the district school boards shall dismiss teachers for "immorality" (ORS 342.530 (1) (b)).

Burton sought relief from the board's termination of her contract under the Civil Rights Act. On the plaintiff's motion for summary judgment the District Court held:

> . . . that statute vesting in school board the power to dismiss teachers for immorality without defining immorality is unconstitutionally vague because it fails to give fair warning of what conduct is prohibited and permits erratic and prejudiced exercise of

> authority; the statute also presents serious constitutional problems by not requiring a nexus between conduct and teaching performance. (Id. at 254.)

District Judge, Solomon continued:

> I find this statute unconstitutionally vague. "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."
> . . . No amount of statutory construction can overcome the deficiencies of this statute. (Id. at 255.)

Thus the court struck down the state statute while applying the Morrison principle in protecting the teacher's right to privacy and in requiring a proven nexus between the alleged immoral conduct and one's ability to perform the classroom function effectively.

Admitted Homosexuality. Gaylord v. Tacoma School District No. 10, 85 Wash. 2d 348, 535 P. 2d 804 (Wash. 1975).

The courts ruled differently from the Burton court, supra, in this similar type of case. In this case the information came from a former student and the teacher was ready to publicize his homosexual status.

The central issue of this case is: Can a teacher be dismissed when it becomes known by school officials that he is a homosexual? The Supreme Court of Washington sidestepped the issue and remanded lower court affirmance of the dismissal with certain evidentiary strictness. Also, the court placed burden of proof of showing "unfitness to teach" on the board of education.

In this case, Gaylord's dismissal procedures began after the principal learned through a former student that Gaylord might be a homosexual. When the principal questioned Gaylord about the accuracy of the statement concerning his sexuality, he confirmed his homosexual status and commented that he was "coming out of the closet."

The Board of Directors of the school district advised Gaylord of his cause for dismissal in the following terms:

> The specific probable cause of your discharge is that you have admitted occupying a public status that is incompatible with the conduct required of teachers in this district. Specifically, that you have admitted being a publicly known homosexual. (Id. at 807.)

Gaylord requested a hearing before the Board of Directors. The Board of Directors, among other findings, concluded:

> That being a publicly known homosexual is a [sic] moral [sic] conduct constituting just cause for dismissal from Tacoma School District No. 10. (Id. at 868.)

The Board of Directors had adopted written policies for discharge as required by state law. Gaylord was discharged under the policy which stated in part that, "The Board of Education considers the following as justifiable cause for release or dismissal or school employees . . . (5) immorality." (Id. at 808.)

On appeal to Superior Court, the court entered its findings of fact:

> There is no allegation or evidence that James Gaylor has ever committed any overt acts of homosexuality. The sole basis for his discharge is James Gaylord's status as a homosexual. (Id. at 808.)

The court concluded:

> A teacher may be discharged where his conduct or status would impair the optimum learning atmosphere in the school district. The public knowledge of James Gaylord's status as a homosexual would impair the optimum atmosphere in the classroom and is a cause for dismissal . . . . A rational nexus between Mr. Gaylord's status as publicly known homosexual and his job was established by the testimony of The Administrators of School District No. 10 that this fact would impair the educational process. (Id. at 808,)

The court went on to declare that Gaylord's discharge solely on the basis of his status as a publicly known homosexual is not unconstitutional and does not violate the equal protection clause of the Fifth and Fourteenth Amendments nor the right to privacy. The court concluded:

> The allegations of "immorality" as sufficient cause for discharge were not maintained at the trial and not seriously argued in this court . . . 1. Plaintiff was not discharged for "immorality" per se. 2. Plaintiff was discharged for a "status" and the improper conduct in making "known" his status. (Id. at 810-811.)

Here the court rules, in effect, that making known one's homosexual status is improper conduct sufficient for dismissal.

Promoting "Gay Life." Acanfora v. Board of Education of Montgomery County, 491 F. 2d 498 (Md. 1974).

In this case a teacher was relieved of his teaching assignment and transferred to an administrative position when the Montgomery County School Board learned that the teacher, Acanfora, was a homosexual.

Montgomery County school officials, unaware that Acanfora was a homosexual, employed him as a junior high school science teacher. They did not learn of his homosexuality until several weeks after school opened in the fall, and only then as a result of a widely publicized press conference at which the Pennsylvania Secretary of Education announced favorable action on Acanfora's application for teaching certification in that state. Shortly after the public disclosure, the Montgomery County Deputy Superintendent of Schools transferred Acanfora, without reduction in pay, from teaching to administrative duties in which he had no contact with children. Acanfora demanded that he be returned to his classroom assignment. When school officials would not accede to Acanfora's demands, court action was commenced against the school board under the Civil Rights Act.

At this point, Acanfora appeared on television, radio, and press interviews and spoke on the difficulties homosexuals encounter. In the interviews he did not advocate homosexuality, and stressed that he had not and would not discuss his sexuality with children, but he sought

community acceptance of homosexuality.

The United States District Court denied relief. Acanfora appealed. The United States Court of Appeals ruled against the Appellant, but not because of the fact that he was a homosexual nor because of the notoriety attached to the press and television interviews, but because he withheld from his application for a teaching position material information that he thought would have prevented employment in the first place. Acanfora withheld the fact that he was a member of the Homophiles of Penn State. While a member of the Homophiles he served as treasurer of that club of homosexuals and joined other members in bringing a lawsuit that established the Homophiles as an official university organization.

The district court held that school officials wrongfully transferred Acanfora to a nonteaching position when they discovered that he was a homosexual, but denied relief to the appellant because of his subsequent press and television interviews. The Court of Appeals upheld the Circuit court decision but on different grounds.

Circuit Judge, Butzner, states:

> We hold that Acanfora's public statements were protected by the First Amendment. We conclude, however, that he is not entitled to relief because of material omissions in his application for a teaching position. (Id. at 499.)

In response to Acanfora's assertion that the principles in the instance case do not apply to his situation because the school officials transferred him on account of his homosexuality, not the omission from his application, the court replied:

> His intentional withholding of facts about his affiliation with the Homophiles is extricably linked to his attack on the constitutionality of the school system's refusal to employ homosexuals as teachers. Acanfora purposely misled school officials so he could circumvent, not challenge, what he considers to be their unconstitutional employment practices. He cannot now invoke the process of the court to obtain a ruling on an issue that he practices deception to

avoid. (Id. at 504.)

It seems appropriate at this point to mention, in light of this court decision, that the survey of the state statutes for this study revealed that a large number of states now list as a grounds for dismissal and license revocation, "any cause that would have prevented the issuance of the certificate in the first place."

Oral Copulation. Board of Education of the El Monte School District of Los Angeles County v. Calderon, 110 Cal. Rptr. 916 (Calif. 1974).

Oral copulation is an act that has a record of court disfavor.

In a 1974 California case a probationary certificated teacher was arrested on the campus of the Los Angeles City College and charged with having engaged in an act of oral copulation with another man, a violation of the California Penal Code.

The plaintiff board placed the defendant on compulsory leave of absence without pay as authorized by state statute. Ten months later the defendant was tried on the criminal charge and was acquitted. He notified the plaintiff board that he desired to resume his teaching duties and demanded payment of back salary. The board gave the defendant formal notice that it intended to dismiss him within thirty days unless he requested the court review as provided by state statute. The defendant entered his request for such a review, and the board filed its complaint which initiated the court action.

Calderon contended that under section 13409 of the Education Code the Board is prohibited from discharging him because he was acquitted on the criminal charge.

The Court of Appeal, quoting the trial court, found that the defendant did engage in the act of oral copulation. In the language of the lower court:

> . . . this conduct "was indicative of corruption, indecency, depravity, dissoluteness, and shamelessness, showing moral indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare," and "was discussed at Board meetings attended by teachers and interested parents within the community." It concluded that "the defendant's conduct . . . is immoral conduct . . ." and he is not entitled to recover any back pay. (Id. at 918.)

In ruling in favor of the school board the appellate court drew a distinction between weight of proof needed in criminal cases as compared to dismissal cases. The court said:

> While considering appellant's contention that his acquittal of the criminal charge . . . should be sufficient to permit him to continue as a teacher, we cannot ignore the fact that a conviction can be based only on a determination of guilt beyond a reasonable doubt. "A judgment of acquittal does not establish that the acts constituting the offense charged were not committed by the defendant; it means only that they were not proved beyond a reasonable doubt . . . We reasonably assume, therefore, that our Legislature properly intended . . . to permit school boards to shield children of tender years from the possible detrimental influence of teachers who commit acts therein . . . even though they are not found guilty beyond a reasonable doubt. (Id. at 920-921.)

The legal principle set forth in this case, in essence, maintains that if there is reasonable doubt the teacher dismissal will stand. The decision again places children's welfare above individual rights where only the property right of employment is involved.

Oral Copulation. Governing Board of the Mountain View School District of Los Angeles County v. Metcalf, 111 Cal. Rptr. 764 (Calif. 1974).

A few sexual acts such as oral copulation have been viewed by the courts as serious enough to constitute immorality per se.

This case involved a probationary elementary teacher who was charged with prostitution (lewd act between persons for money or other considerations), more specifically, with being caught engaged in an act of oral copulation in a doorless toilet stall in a public restroom of a downtown department store during business hours.

The superior court found that the governing board of the school district had sufficient cause to place the teacher on compulsory leave of absence and thereafter to dismiss him for immoral conduct and evident unfitness to teach. The teacher appealed.

The incident of oral copulation became known only to the district superintendent, his secretary, and to the principal of Metcalf's school. Regardless of the lack of notoriety, it was the principal's professional opinion that if the incident ever became known, the teacher would be unable to function effectively and his exemplary image would be destroyed. The court agreed. Furthermore, the court cited Pettit v. State Board of Education in declaring that the act per se evidenced unfitness to teach.

A central issue in this case involved the question: Should the "exclusionary rule" extend to civil disciplinary trials of this character? The answer was "No."

The Court of Appeal speaks to the issue of "exclusionary rule." It held:

> . . . misconduct of teacher indicated serious defect of moral character, normal prudence and good common sense and evinced (sic) an unfitness to teach and that evidence of the conduct was admissable although it had been obtained by police in violation of Federal and State Constitutions. (Id. at 764.)

Lewd Act Involving Minor. Hankla v. Governing Board of the Roseland School District, 120 Cal. Rptr. 827 (Calif. 1975).

An elementary principal was charged with two violations of the California Penal Code by causing a minor to place his hands on principal's penis. The ensuing charges were (1) contributing to the delinquency of a minor and (2) indecent exposure, both sex offenses under California law.

The jury acquitted Hankla on the first charge, and the second charge was finally terminated due to the State's failure to give Hankla

a speedy trial. A major issue of the case involved procedural due process and whether Hankla received or knew of his mailed notices.

The board of education sent Hankla formal notice of its intention to discharge him within thirty days unless he demanded a hearing as provided by law. A first notice by certified mail was attempted to be served upon Hankla. Two weeks later a second notice by certified mail was attempted. Hankla claimed he was not notified of impending dismissal.

The central legal issue concerning the case was whether Hankla could be dismissed when criminal conviction was never obtained. The court said that it is clear that acquittal of an employee in a criminal proceeding does not bar subsequent dismissal proceedings. Pettit v. State Board of Education was cited as precedent basis of the ruling. Although the court did not find it necessary to rule on the immoral grounds of Hankla's dismissal, it upheld dismissal on his failure to request a hearing within thirty days as prescribed by law. He could not convince the court that the statutory provisions for legal notice in dismissal proceedings or the mail service had failed to serve proper notice.

The significant legal point made in this case is "that acquittal in criminal proceedings does not bar subsequent dismissal proceedings."

Transsexualism. In Re Grossman, 316 A. 2d 39 (N. J. 1974).

This novel New Jersey case is presented here because of its sexual nature and because the employing school board charged, among other things, that the exhibited teacher conduct and behavior deviated from the acceptable standards of the community, a phrase identical to the definition of immorality. Due to the unusual nature of the act in question, "conduct unbecoming a teacher" was chosen as the grounds for dismissal rather than "immorality" or its counterpart "unfitness to teach."

Later in the case, the grounds for dismissal was changed to "incapacity."

The case involves an elementary music teacher who underwent sex-change surgery from male to female gender.

Paul Monroe Grossman, 54, notified his superiors of his impending absence from his duties for surgery but did not reveal the nature of the operation until he returned for duty two months later. At that time he informed the superintendent that he intended to remain in the school system as a female. He completed the academic year in male attire. At the close of the school year he assumed the name of Paula Miriam Grossman and began to live openly as a woman. The school board, in frequent conference with Grossman during the summer, offered a proposal to Grossman: Grossman would be engaged on a one year contract at the same pay to teach the same courses, but on an elective basis at the high school, provided Grossman would resign, thus relinquishing tenure, and obtain a new teaching certificate in her female name. The offer was rejected. Subsequently the board filed charges against Grossman and suspended her without pay on the following grounds:

> (1) her presence as a teacher had created and would continue to create a degree of sensation and notoriety within the system and the community which would severly impair the board's ability to conduct an efficient and orderly school system; (2) under the circumstances of the case, including the failure to disclose the condition and anticipated surgery, Mrs. Grossman had exhibited conduct unbecoming a teacher; (3) as a result of the sex-reassignment surgery, Mrs. Grossman underwent a fundamental and complete change in her role and identification, thereby rendering herself incapable of continuing to function as Paul Monroe Grossman, the person who had been engaged as a teacher by the board; (4) Mrs. Grossman exhibited conduct and behavior deviant from the acceptable standards of the community, and (5) she exhibited abnormality. Each of these charges, it was asserted, constituted just cause for dismissing her from the school system. (Id. at 42.)

The charges were forwarded to the State Commissioner of Education. When the required hearing was held before the Assistant Commissioner of

Education all charges were dropped except the hypothesis of danger of psychological harm to children. The Commissioner concluded:

> Paul Monroe Grossman knowingly and voluntarily underwent a sex-reassignment from male to female. By doing so, he underwent a fundamental and complete change in his role and identification in society, thereby rendering himself incapable to teach children in Bernards Township because of the potential her [Grossman's] presence in the classroom presents for psychological harm to the students of Bernards Township. Therefore, Paula a/k/a Paul Monroe Grossman should be dismissed from the system by reason of just cause due to incapacity. (Id. at 42-43.)

The Commissioner took into account the unusual nature of the case, and finding no moral turpitude, directed the school board to apply to the Teachers' Pension and Annuity Fund for a disability pension in behalf of Mrs. Grossman pursuant to state statutes, as well as to grant her back pay. Both sides appealed.

The State Board of Education reversed the commissioner's order to pay Grossman back salary.

To use the vernacular, the New Jersey Superior Court handled the case "like a hot potato." The court said, in effect, that its function was not to weigh evidence, to determine credibility of witnesses, or draw inferences, but to uphold findings if based on sufficient and credible evidence.

The case covered a myriad of procedural, statutory, administrative and constitutional law points. Finally, the court ruled:

> . . . that the finding that the retention would have an adverse effect upon the students justified teacher's dismissal due to "incapacity" as used in the statute is directly related to fitness to teach; that the Commissioner properly directed that local board submit disability retirement application in teacher's behalf; that the teacher was not denied equal protection of the laws; and the teacher was entitled to back pay. (Id. at 39.)

Sexual Misconduct Other Than Homosexuality

Fornication Involving Adult Student. Board of Trustees of the Compton Junior College District of Los Angeles County v. Stubblefield, 94 Cal. Rptr. 318 (Calif. 1971).

The Compton case involves a male teacher at the junior college level in the California system of public education. Stubblefield was found by a policeman parked on a dark street with a female student from his night class. When the policeman approached the parked vehicle, which he believed to be abandoned, the defendant sat up in the rear seat of the car to confront the investigating officer. Both the defendant and the female student were partly nude and appeared to have been engaged in sexual relations. The defendant cursed the officer, slammed the car door open against the officer and sped away, nearly running over the surprised officer. Pursuit ensued at speeds of 80 to 100 miles per hour. The teacher was arrested, and dismissal proceedings were initiated.

The California statutes state procedures for discharge;

> When school district proffers charges as ground for discharge, and employee demands hearing, district can either rescind action or ask superior court to conduct hearing; in the latter case court conducts what in other areas of civil service would be administrative hearing. (Id. at 318.)

When the Board formally notified Stubblefield of its intention to dismiss him after thirty days, based upon charges of "immoral conduct" and "evident unfitness" to teach, the defendant demanded a hearing as provided for in the statutes. The court found that the charges against the defendant were true and constituted sufficient basis for his dismissal.

Stubblefield's defense was based upon Morrison v. State Board of Education in which a single isolated act of sexual misconduct, or immorality, was not found to be "sufficient evidence of unfitness" to justify dismissal for immorality under state statutes.

The Court drew several interesting distinctions between Morrison and Stubblefield: (1) the lapse of time between the conduct and the discharge; (2) the locales where the conduct occurred; (3) the status of the parties involved; (4) license revocation versus dismissal; (5) potential for misconduct; and (6) notoriety. In all instances the Stubblefield arguments were found lacking and the ruling of the trial court was affirmed.

Fornication Involving Minor. Denton v. South Kitsap School District, Wash. App. 516 P. 2d 1080 (Wash. 1973).

This Washington case involves sexual intercourse by a teacher with a minor female student. The teacher, Denton, had permission from the student's parents to date their daughter who was a student at Kitsap High School. At the time, Denton taught at Marcus Whitman Junior High School, where the student had previously attended. The dating began in the summer of 1971. In early November the school administrators received information from a counselor that the student in question was pregnant and that a teacher was involved. When questioned by the principal, and later by the principal and assistant superintendent, Denton admitted to the girl's pregnancy and that he was responsible. They were married on November 12, 1971.

The Board discharged Denton following a hearing on December 8. Denton appealed his case to the superior court, which sustained the action of the school board. On appeal to the Court of Appeals of Washington, Denton was again denied relief.

Denton's defense relied heavily upon Morrison v. State Board of Education, claiming that discharge of a teacher cannot be predicated upon sexual immorality absent a showing that the conduct rebounds

adversely upon the teacher's "fitness to teach."

To that argument, the court responded:

> While the argument that "immorality" per se is not a ground for discharge without a showing of adverse effect upon "fitness to teach" or upon the school has merit . . ., we decline to set such a requirement where the sexual misconduct complained of directly involves a teacher and a minor student. In our view, the school board may properly conclude in such a situation that the conduct is inherently harmful to the teacher-student relationship, and thus to the school district. We are accordingly of the opinion that Mr. Denton's conduct constituted sufficient cause for discharge. (Id. at 1082.)

Thus, the court established here that improper relations with former students reflect back upon the previous teacher-pupil relationship.

Fornication Involving Former Student. Goldin v. Board of Education of Central School District No. 1, 359 N.Y.S. 2d 384 (N. Y. 1973).

In the same year as the Denton decision in Washington, a New York court found that co-habitation with a former student did not necessarily reflect back on the teacher-student relationship, although the teacher was discharged.

In this case a high school guidance counselor appealed to the New York Supreme Court, seeking a declaratory judgment whose effect would be to bar the prosecution of two charges lodged against him by the employing board of education. Goldin was charged with spending the night with an eighteen year old female in August after she had graduated in June from Ward Melville High School where Goldin served as guidance counselor. Secondly, Goldin was charged with repeatedly lying to school officials who inquired about the event in question.

The first question turned on whether or not the consensual sexual exploits with a former student developed during the teacher/pupil association at school. In finding for the teacher the Supreme Court Judge,

Andrew J. DiPaola, stated:

> . . . absent any allegation or proof that high school guidance counselor's consensual sexual exploits with a former student in the privacy of her home were the continuation or culmination of an association commenced or an influence exercised while he and the young lady maintained the relationship of teacher and pupil, the Board of education would be enjoined from prosecuting or taking any other action against the guidance counselor with respect to that charge. (Id. at 384.)

The second charge against Goldin is more damaging. The court ruled that the board of education could prosecute on the charge of lying because such conduct is reflective of teacher's lack of moral character and of insubordination. (Id. at 385.)

The guidance counselor admitted before the court to both charges but claimed neither is sufficient cause for dismissal. The case of Fisher v. Synder was cited by the court in support of Goldin's claims of insufficient cause on the first charge. But the court drew a distinction between this case and Puentes v. Board of Education on the second charge. In Goldin the issue was lying, in Puentes the issue was refusing to answer the questions without advice of counsel.

Diverse Sexual Misconduct. Pettit v. State Board of Education, 513 P. 2d 889 (Calif. 1973).

A widely publicized case that reached the Supreme Court of California involved a female elementary school teacher whose teaching credentials were revoked for immorality.

The court record reveals that Pettit and her husband were members of "The Swingers", a private club devoted to promoting diverse sexual activities between members at club parties. An undercover officer investigating the club was accepted for membership and observed the teacher, Pettit, during a party at a private residence. He reported that immediately upon entering, he observed a man and woman engaged in sexual

intercourse in an open bedroom. During the course of the evening he saw various other couples similarly engaged. During a one hour period the officer reported that he observed the plaintiff commit three separate acts of oral copulation with three separate men. In each case participants were undressed and other persons were looking on.

The plaintiff was arrested and charged with violation of the Penal Code in the form of moral turpitude. Plea bargaining was arranged and Pettit pleaded guilty to a lesser charge: "outraging public decency", a misdemeanor.

License revocation proceedings were initiated on the grounds that Pettit's conduct involved moral turpitude and demonstrated her unfitness to teach. During the hearing proceedings Mrs. Pettit did not testify. But her husband testified that they had appeared on two television shows and discussed "nonconventional sexual life styles, including adultery and "wife swapping." Although Mrs. Pettit wore a mask and Mr. Pettit wore a false beard, at least one of the plaintiff's fellow teachers recognized the Pettits and had discussed the televised statements with other teachers.

The plaintiff presented evidence at the hearing indicating that she had received a favorable rating by the principal for her teaching and she had a contract for the next school year indicating an offer to hire for the next school year.

The hearing examiner ruledin favor of the school board. In part, he said:

> . . . that plaintiff has engaged in acts of sexual intercourse and oral copulation with men other than her husband; that plaintiff appeared on television programs while facially disguised and discussed nonconventional sexual behavior, including wife swapping; that although plaintiff's services as a teacher have been "satisfactory", and although she is unlikely to repeat the sexual misconduct,

> nevertheless she has engaged in immoral and unprofessional conduct, in acts involving moral turpitude, and in acts evidencing her unfitness for service. (Id. at 89i.)

The State Board adopted the findings on the hearing officer in toto. The case was appealed through the courts to the California Supreme Court. There the Morrison doctrine was invoked in defense of Pettit's conduct and in support of the claim that the acts under question did not justify license revocation. In ruling against the appellate, the court drew three distinctions between Morrison and Pettit. The acts committed by Morrison were non-criminal, occurred in private, and did not indicate "potential to misconduct." Other points that arose in the case included: (1) notoriety and publicity of teacher's conduct can be a significant factor in determining "unfitness to teach;" (2) there is a definite difference between private acts and semi-private acts; (3) publicity may impair ability to teach. The theory behind the court's decision seemed to be: one who failed to practice morality would have difficulty teaching it.

Finally, since the courts across the nation are frequently relating immorality to fitness to teach before dismissals will be upheld by the courts, it seems that the dissenting opinion of the Pettit court represents a significant legal point of view and worthy of mention here. That opinion gets at the widely diverse concepts of immorality and the inherent problems involved in reaching clear-cut decisions in immorality cases. In a lengthy and profound dissent, Justice Tobriner said in part:

> But in traveling this road the majority overlook constitutional predicates. Under the majority's interpretation of Education Code Section 13202, the opinion of a superintendent that a teacher has committed an 'immoral' act is sufficient to bar that teacher permanently from the profession; so interpreted, section 13202 would be unconstitutionally vague and overboard. The concept of 'immoral' conduct as enunciated by the majority roams without restraint. Undoubtedly some school superintendents believe the drinking of alcohol, the smoking of tobacco, or the playing of cards is immoral; others believe it immoral to serve in the military forces, and still others believe it

> immoral to refuse to serve. As the present case illustrates, there is a wide divergence of views on sexual morality; plaintiff did not believe her conduct immoral, and many would agree. Since the statute, so interpreted, presents a vortex of vagueness, provides no warning of the kind of conduct that will lead to discipline, and establishes no standard by which the decision of the board can be measured, it is unconstitutionally vague. These are the reasons why this court in Morrison concluded that the only viable test was the fitness of the teacher to teach.
>
> In conclusion, I submit that the majority opinion is blind to the reality of sexual behavior. Its view that teachers in their private lives should exemplify Victorian principles of sexual morality, and in the classroom should subliminally indoctrinate the pupils in such principles, is hopelessly unrealistic and atavistic. The children of California are entitled to competent and dedicated teacher; when, as in this case, such a teacher is forced to abandon her lifetime profession, the children are the losers. (Id. at 899.)

Lewd Public Fantasying. Wishart v. McDonald, 500 F. 2d 1110 (Mass. 1974).

This case distinguishes between "private conduct" and "on private property" and validates the constitutionality of "conduct unbecoming a teacher" as grounds for dismissal.

Massachusetts does not list immorality per se as a statutory grounds for teacher dismissal. "Conduct unbecoming a teacher" was used as basis for dismissal of an elementary teacher who engaged in lewd public acts that may be classified as immorality under different state statutes.

Neighbors of Wishart reported that occasionally until the spring of the year, and weekly thereafter on Thursday evenings, Wishart carried a mannequin dressed in feminine attire into his yard and caressed the breast area of the mannequin. One neighbor observed him lifting the skirt and placing it between his legs, others thought they observed masturbation. Wishart denied it.

The school district superintendent, McDonald, went to houses adjoining Wishart's house and observed Wishart's act as he moved the

mannequin to the front, side, and rear of his house.

The Thursday evening acts attracted much community discussion, attracting notoriety.

Wishart was transferred to non-teaching duties for the remainder of the school year. Then, following a hearing with the board, Wishart was discharged.

Action was brought by Wishart against various defendants and the school board for declaratory injunctive relief and monetary damages. The case reached the United States Court of Appeals for a final decision.

The court held that the action of the school committee was not arbitrary or capricious. Since Wishart admitted engaging in the conduct with which he was charged, the question before the court was whether the reasons given were related to the education process.

To Wishart's claim that the school committee was punishing him for his constitutionally protected "private" conduct, the court agreed that the conduct occurred on his "private property" but refused to equate "on private property" with "in private."

Finally, the court ruled against the plaintiff's contention that the statutory term "conduct unbecoming a teacher" is unconstitutionally vague.

The dismissal was affirmed.

Cohabitation. Fisher v. Synder, 476 F. 2d 375 (Neb. 1975).

The Fisher case is an example of a school board's unsuccessful attempt to dismiss a teacher of suspected immorality through the charge of "conduct unbecoming a teacher." The teacher, a middle-aged divorcee in a rural Nebraska community, was discharged from her high school teaching position as a result of keeping male overnight guests in her

one-bedroom apartment. The guests, mostly young men and friends of her son who taught school in a neighboring town, stayed with Mrs. Fisher due to limited hotel accommodations in the town and upon the advice of the secretary of the Board of Education. The most frequent visitor was a young man, age 26, from California for whom Mrs. Fisher made arrangements to observe in the high school classrooms as a means of fulfilling certain of his college requirements. The visitation arrangements were reported in the local newspaper and no attempt was made to conceal the fact that Mrs. Fisher had frequent visitors.

In the spring of 1972 the school board notified Mrs. Fisher that her contract would not be renewed at the end of the school term. At her request, Mrs. Fisher was granted a hearing relative to her dismissal notice. The board justified the dismissal.

On appeal to the District Court, the court ordered reinstatement. The Board appealed to the Court of Appeals. In affirming the lower court decision, the Court of Appeals cited numerous federal cases in setting forth the following legal principles:

> Thus, while a school board may legitimately inquire into the character and integrity of its teachers . . . it must be certain that it does not arbitrarily or capriciously dismiss a teacher based on unsupported conclusions drawn from such inquiries . . . (Id. at 377.)
>
> The openness of the association, and the age differential between Mrs. Fisher and her guests, would seem to belie any inference of impropriety. The school board's inference of misconduct was arbitrary and capricious and therefore constituted an impermissable reason for terminating her employment, since the inference lacked any valid basis in fact. (Id. at 378.)
>
> . . . boards inference that teacher's activity was social misbehavior not conducive to maintenance of integrity of public school system was arbitrary and capricious and was an impermissable reason for terminating her employment. (Id. at 375.)

The court was saying here that inferring "wrong doing" is one thing, but proving wrong doing is a different matter. Contrast this

case with Sullivan, infra.

Cohabitation. Sullivan v. Meade County Independent School District No. 101, 387 F. Supp. 1237 (S. D. 1975).

This case differs from Fisher, supra, in that impropriety was implied or flouted by the accused teacher after warnings of community reaction.

Living with a boyfriend without the benefit of matrimony brought forth dismissal of a teacher in South Dakota. The charge was "gross immorality," later changed to "gross immorality and incompetency."

Kathleen Sullivan was employed to teach in the primary grades of Meade School located in a small community town. She lived in a mobile home owned by the school board and located in a trailer park. In October of her first teaching year, a man of similar age moved in with Miss Sullivan. Students often visited in her home, and it was open and common knowledge that Miss Sullivan was living with a man, whom she readily identified as her boyfriend, without benefit of matrimony. After parents complained to a board member about the arrangement, the principal spoke to the teacher and warned that continuance of the arrangement could jeopardize her job.

Miss Sullivan stated that she had no intention of changing her living habits. Later, in three executive board sessions the board tried to reach a compromise and persuade the teacher to discontinue living with a man in an unwed status and therefore continue her employment with the school district. She refused, and was accordingly dismissed. The teacher brought charges against the school district and members of the school board challenging her dismissal. The teacher claimed that the board's action was arbitrary and capricious, a denial of substantive due

process, and denial of the right to privacy and free association.

The court concluded that there was a relationship between the teacher's private life and the proper functioning of the educational process. It stated:

> It is this Court's belief that the plaintiff has failed to show that the school board was arbitrary and capricious in her dismissal. This Court's decision in no way stands for the proposition that school boards have unfettered discretion in dealing with their employees. It simply stands for the proposition that the school board proscribe the conduct of the plaintiff in the present case and, that the reasons for dismissal were related to the proper functioning of the educational system, and had a basis in fact. (Id. at 1249.)

It is important to note here that the principal's statement to the teacher relating community concern of her life style constituted fair warning sufficient to keep the statutory term "immorality" intact and to relate immorality to community moral standards.

Unwed Motherhood. Leechburg Area School District v. Commonwealth of Pennsylvania Human Relations Commission, 239 A. 2d 850 (Pa. 1975).

This case relates to dismissal for immorality only in that it deals with a policy set forth by a school district which treated unwed pregnancies as immoral.

The Pennsylvania Human Relations Commission ruled that Leechburg School District maternity leave policy discriminated against females in violation of the Pennsylvania Human Relations Act. The school board appealed to the court. The Commonwealth Court of Pennsylvania upheld the Commission ruling.

The interesting part of the case relates to the policy provision which withholds maternity leave from unwed mothers as a means of discouraging immoral conduct. The court speaks to that element of the policy, thus:

. . . the instant policy discriminates against females if its

> laudatory purpose . . . is to insure the moral qualifications of public school teachers. The effect of a denial of maternity leave to an unwed pregnant female teacher is to terminate absolutely her employment. In this sense, the policy functions as a penalty. Yet there is no evidence that the appellant has adopted a mandatory termination policy for unwed male teachers who have fathered illegitimate children or have otherwise participated in extramarital sex. (Id. at 853.)

The court here based its decision on sex discrimination without speaking to the issue of immorality.

In the following case the court goes further in protection of teachers and aides with illegitimate children.

Unwed Mothers. Andrews v. The Drew Municipal Separate School District, 507 F. 2d 611, 371 F. Supp. 27 (Miss. 1975).

This case involves a teacher aide rather than professional teacher but the legal principles demonstrated herein are equally applicable to teachers.

Two unwed mothers, one an employed aide and the other an applicant, brought an action under federal civil rights statutes to have declared unconstitutional a school district rule under which unwed mothers were ineligible to be hired or to be retained as teacher aides.

When the superintendent of the Drew school system learned that there were some teacher aides presently employed in the school district who were parents of illegitimate children, he implemented an unwritten edict that parenthood of an illegitimate child would automatically disqualify an individual from employment in the school system, whether already employed or an applicant for employment.

The superintendent, Pettey, initiated the policy without advice from or approval by the board. After the lawsuit was commenced the board reviewed and adopted the controversial policy which made unwed mothers ineligible for employment. The school district then offered to the

court three rationales through which it asserted that its rule under attack furthers the creation of a properly moral scholastic environment: (1) unwed parenthood is prima facie proof of immorality; (2) unwed parents are improper communal role models after whom students may pattern their lives; (3) employment of an unwed parent in a scholastic environment materially contributes to the problem of school-girl pregnancies. (Id. 614.)

The United States District Court ruled against the school board and offered the following reasoning:

> . . . We hold that the policy or practice of barring an otherwise qualified person from being employed, or considered for employment, in the public schools merely because of one's previously having had an illegitimate child has no rational relation to the objectives ostensibly sought to be achieved by the school officials and is fraught with invidious discrimination; thus, it is constitutionally defective under the traditional, and most lenient, standard of equal protection and violative of due process as well. (Id. at 31.)

The court went on to speak to the issue of moral judgment contained in the school policy:

> Furthermore, the policy, if based on moral judgment, has inherent if unintended defects or shortcomings. While obviously aimed at discouraging prematerial [sic] sex relations, the policy's effect is apt to encourage abortion, which is itself staunchly opposed by some on ethical or moral grounds. It totally ignores as a disqualification, the occurrence of extramarital sex activity, though thought of by many as a more serious basis for moral culpability. (Id. at 33.)

The court concluded:

> The defendants in this case sub judice have made no showing whatever that their policy against employing unwed parents serves a compelling state interest or is necessary for the operation of an educational program. Hence the policy cannot survive strict judicial scrutiny. (Id. at 37.)

The District Court declared the school board rule unconstitutional but refused to award plaintiffs attorney fees, and cross appeals were filed. The United States Court of Appeals affirmed the district court decision

and also found no justification to award plaintiff's attorney fees.

The significance of this case lies in the fact that it undermines the influence of community notions of immorality and looks only to job performance as a criteria for employment.

Masturbation. Moser v. State Board of Education, 101 Cal. Rptr. 86 (Calif. 1972).

The courts have held that certain acts clearly stand as immoral. Masturbation seems to be comparable to oral copulation as an immoral act before reasonable men.

Another California teacher was charged and convicted of a sexual offense under the California Penal Code. The conviction resulted from the teacher's act of masturbating while in public view in a public restroom, and in touching the private parts of another male. The State Board of Education began proceedings to revoke the teacher's teaching credentials. Moser petitioned the Superior Court for a writ of mandate to compel the State Board to rescind its action in revoking petitioner's credentials. The Superior Court affirmed the decision of the State Board of Education in revoking credentials. Moser appealed to the Court of Appeal, and argued that under the doctrine of Morrison he could not be dismissed. The court disagreed. It found that the elements of notoriety and potential for misconduct were not necessary in this case. The act per se constituted moral turpitude and unprofessional and immoral conduct.

Adultery. Erb v. Iowa State Board of Public Instruction, 216 N. W. 2d 339 (iowa 1974).

This case involves sex relations between two teachers who were unfaithful to their spouses. Richard Erb was a teacher of high standing

at Nishua Valley Community School for eleven years. He was married and had two children.

A colleague, Margaret Johnson, who worked at the school with Erb planned to quit teaching and open a boutique in Red Oak. Erb agreed to assist Mrs. Johnson with designing her store. Mr. Johnson became suspicious of his wife and Erb after frequent meetings and late-night absences.

One night Mr. Johnson hid in the trunk of his wife's car and witnessed sexual activity between his wife and Erb without making his presence known.

On advice of his lawyer to catch his wife in a compromising position as evidence for divorce, Mr. Johnson and a few "helpers" as witnesses equipped with cameras eventually located Erb and his wife parked in a remote area. The "raiding party" took pictures of Mrs. Johnson and Erb who were partially disrobed in the back seat of the car.

Erb offered to resign his teaching position, but the local school board would not accept his resignation. He was retained for the ensuing school year and continued to teach.

But before the State Board hearing, the board voted five to four to revoke Erb's teaching certificate. Revocation was stayed by the trial court and the Supreme Court of Iowa, awaiting outcome of the certiorari action and appeal.

The trial court held that Erb's admitted adulterous conduct was sufficient basis for revocation and annulled the writ.

In deciding whether the teacher was "morally fit" to teach, the Iowa Supreme Court relied on Morrison, Jarvella, Fisher, and Metzger precedents in reversing the lower court and state board decisions.

The court stated:

> There was no evidence other than that Erb's misconduct was an isolated occurrence in an otherwise unblemished past and is not likely to recur. The conduct itself was not an open or public affront to community mores; it became public only because it was discovered with considerable effort and made public by others. (Id. at 343.)

Alleged Improper Classroom Behavior

Vulgarity. Palo Verde Unified School District of Riverside County v. Hensey, 88 Cal. Rptr. 570 (Calif. 1970).

A teacher at the junior college level of the California public schools was dismissed for "immoral conduct" and "evident unfitness" arising from vulgar language and gestures in the classroom and abuse to property.

Hensey was accused of and discharged for the following acts: (1) removing from the wall of his classroom a loudspeaker in the presence of students, and telling his superiors that he would do it again if it should be remounted; (2) stating to his students that the loudspeaker "sounded like a worn out phonograph in a whorehouse," and making numerous references to "whore" and "whorehouses" during the semester. Also, when reprimanded for his vulgar language, he submitted to the college president a thesis justifying his use of terms in question; (3) addressing himself to Mexican-American students in the presence of the rest of the class and warning them to be careful in San Luis due to super-syphilis there; and (4) advising his class that the superintendent could be a good superintendent "but that he spent too much time . . . (at this point he stepped over to the wall and simulated licking the wall in an up and down gesture) . . . licking up the board."

The superior court upheld the school district's dismissal of Hensey. Hensey appealed.

The Court of Appeal examined each of the four incidents separately. To the first three acts, the court found that they could not be classified as immoral, but taken together, they would constitute "evident unfitness." As to the fourth act, a vulgar gesture intended to describe a person who would rather curry favor with his superiors than to do his duty and directed specifically to the superintendent, the court was provoked:

> Here we have passed the limits of bad taste and vulgarity . . . This obscene incident indicates both 'immorality' and 'evident unfitness.' (Id. at 575.)

Naturally, the judgment of the lower court and the school district was affirmed.

Obscene Classwork. Oakland Unified School District of Alameda County v. Olicker, 25 Cal. App. 3d 1098, 102 Cal. Rptr. 421 (Calif. 1972).

Olicker was a reading and social studies teacher for thirteen and fourteen-year-old students who had a reading level of first through third grade.

She had difficulty in motivating or disciplining the classes of fifteen children each period. Based on her professional reading of motivation methods, she asked the students to write about anything they wished to write about, and they need not worry about spelling, grammar, and punctuation. Most of the writings dealt with sex and drugs, but the students were interested. Later she let each student write on a "ditto master" which she ran on the duplicator for distribution to students as basis for class discussion. The papers were to be collected at the end of the class. No paper was to leave the room. One did, however. A student dropped a copy in the principal's box.

The board of education filed a complaint in superior court

seeking dismissal of the teacher for immoral conduct and evident unfitness for service. The Superior Court ruled that the teacher was guilty of "evident unfitness to teach."

On appeal to the Court of Appeal the lower court decision was reversed.

Perhaps the issue involved in this case seems trite. It does not, however, include an example of the type of writing and degree of obscenity that was involved. The student writings are contained in the appendix of the court record. Inclusion here might be repulsive to the Puritan conscience.

Obscene Teacher Theme. Lindros v. Governing Board of the Torrance Unified School District, 510 P. 2d 361 (Calif., 1973).

A probationary tenth grade English teacher petitioned to the Supreme Court of Los Angeles County for peremptory writ of mandate to compel the school board to set aside the decision not to rehire him for the ensuing year. The court denied the writ, and Lindros appealed.

The Supreme Court of California held that the teacher's reading to his class of a theme that he had written which ended with a controversial epithet did not constitute "cause" for dismissal, that presentation of the theme to his class sought to pursue a bona fide educational purpose, and that in doing so neither the welfare of the school nor the pupils were adversely affected.

The incident that prompted the dismissal controversy stemmed from the teacher's example of how to write a short study relating a personal emotional experience. When the assignment was made to students several of them requested that the teacher present them with an example of his own work. He obliged with a reading of "The Funeral" which he had written

as a rough draft for a television play at Loyola University. The story described personal feelings the teacher had experienced while attending the funeral of a black student who died of an overdose of heroin. The story concluded with the following paragraph included in the court record:

> I felt whipped out; this was a strange two hours; strange to a white who had no blackness in him; strange to a white who knew no such poverty and desperation; even stranger outside when I greeted a young black in a panther-like outfit: 'white-mother-fuckin pig' . . . (Id. at 363.)

Lindros, the record shows, only used the last phrase with his more mature college preparatory classes. He substituted the letters "W.M.F.P." for the last phrase in regular classes.

In this case and Olicker, supra, where the alleged obscene acts could be clearly related to sound educational objectives the teacher was upheld in his actions. The following case, however, shows a doubtful relationship.

Promoting Diverse Life Style. Brubaker v. Board of Education, School District 149, Cook County, Illinois, 502 F. 2d 973 (Ill. 1974).

The instant case involves three non-tenured elementary teachers, a husband and wife and one colleague, who distributed brochures obtained from the movie theater showing "Woodstock" to their primary and eighth grade students. When the brochures reached students' parents, school officials were informed and, subsequently, the teachers were discharged. The teachers appealed, seeking reinstatement, back salary, attorney fees, and punitive damages of $200,000 each for willful defamation.

The poem in question within the Woodstock brochure referred to the apparent joys of smoking marijuana, and invited children to "throw off discipline imposed on them by the moral environment of their home-life and enter a new world of love and freedom." As an example of the

nature of the "Woodstock" language, a comment from the court report is herein quoted:

> As a message to the minds of eighth graders, the brochure's poetry can and probably must be fairly read as an alluring invitation and a beckoning for them to throw off the dull discipline imposed on them by the moral environment of their home life, and in exchange to enter into a new world of love and freedom--freedom to use acid and grass, freedom to take their clothes off and to get an early start in the use of such vulgarities as "shit," "fucking," and their companions. (Id. at 976.)

The dismissal was upheld by the United States Court of Appeal.

Use of Obscene Literature. Board of Trustees of Los Angeles Junior College District of Los Angeles County v. Metzger, 104 Cal. Rptr. 452 (Calif. 1974).

A charge of "immoral conduct and evident unfitness for service" was brought against a permanent teacher at the junior college level in the California system of public education. The board attempted to suspend and dismiss the teacher on the charges. She appealed the action to the superior court, which held that the charges were insufficient for suspension or discharge. The District Board appealed to the Superior Court against reinstatement of the teacher.

The litigation arose from the teacher's admitted use of a poem entitled "Jehovah's Child" and a poem composed and distributed by the defendant entitled "You Can Become a Sexual Superman." The poem contained many obscenities, slang references to male and female sexual organs, sexual activity, and profane references to Jehovah and Christ. The book which the poem advertised, "The Picture Book of Sexual Love," contained photographs of an entwined nude couple suggesting sexual intercourse.

The teacher pointed out to the court that none of her students were under eighteen years of age, that the materials were used as

supplementary materials to show her students that words which, on the surface, appear vulgar or coarse can be interpreted in different ways and carry out different meanings.

The poem in question composed by the teacher was sprinkled with Anglo-Saxon obscenities, slang references to male and female sex organs and to sexual activity, and profane references to Jehovah and Christ. [Id. at 453.]

The school had adopted no regulations or directives restricting the types of supplementary material which could be used in English classes, and the teacher had used the questioned material before and had not been instructed to discontinue the practice.

The Supreme Court of California held that the teacher had not acted with an improper motive and the questioned literature was not out of line with modern academic practice.

Offensive Language and Punishment. Wood v. Goodman, 381 F. Supp. 413. (Mass. 1974).

This case involves dismissal of a junior high school music teacher on the grounds of "conduct unbecoming a teacher." The conduct in question was use of offensive language and corporal punishment in the classroom. The acts were not denied. But the teacher took action under the Civil Rights Act against the superintendent and school committee seeking compensation and punitive damages. He claimed that the statute providing for the suspension of teachers for "unbecoming conduct" was unconstitutional.

The United States District Court found the teacher's acts constituted sufficient basis for the school committee's action, that the statutory terms "unbecoming conduct" and "other good cause" are

sufficiently definite, and that the teacher was provided procedural and substantiye due process. (Id. at 414.)

Gun in Classroom. Wright v. Superintending School Committee, City of Portland, 331 A. 2d 640 (Me. 1975).

Wright, who was a teacher in the Portland public schools, was also a federally licensed gunsmith and holder of a concealed weapons permit. He brought a small pistol and some ammunitition to school one day in the pocket of his jacket which he left hanging in a small alcove of the classroom area.

When he realized the gun was in the jacket pocket he decided to leave it there because the lock to his car door was frozen and would be difficult to open.

The incident was discovered, and Wright, a tenured teacher with twelve years of satisfactory service, was discharged. Wright filed a complaint attacking the action of the school committee. The superior court upheld the dismissal and Wright appealed.

The Supreme Court of Maine reversed the lower court decision. The reasoning of the court follows:

> A single, isolated instance of grave lack of judgment which does not involve such moral impropriety, professional incompetency, or unsuitability to the discharge of his duties as to undermine teacher's future classroom performance and overall impact on his students does not constitute 'unfitness to teach.' (Id. at 641.)

Here the court excuses poor judgment. This type of act does not compare with the more repulsive acts examined in earlier cases of sexual misconduct.

Nonsexual Criminal Offenses

Conspiracy to Bribe. Pordum v. Board of Regents of the State of New York, 491 F. 2d 1281 (N.Y., 1974).

The revocation of a teaching certificate on any grounds may imply "unfitness to teach." Such was the case in Pordum.

Pordum had secured a two-year leave of absence from his teaching position, which was later extended to five years. During the fourth year of his leave, while a member of the Erie County Legislature, Pordum was convicted of the crime of conspiracy to promote and facilitate the bribery of public officials. Subsequently, he was sentenced to three years in prison. He was released on parole in eight months. He reported to officials in his school district that he was ready to resume teaching. The school district assigned him to a school, but the State Commissioner of Education informed Pordum to show cause why his teaching certificate should not be revoked.

Pordum appealed through the courts for relief. The United States Court of Appeal upheld the revocation. It held that the appellant's right to due process had not been violated, and that the statutes were not unconstitutionally vague or overboard.

Possession of Marijuana. Comings v. State Board of Education, 100 Cal. Rptr. 73 (Calif. 1973).

The central issue in this case deals with whether and upon what evidence a teacher may be dismissed after conviction of possession of marijuana.

The instant case heard before California Court of Appeal considers two teacher dismissal and subsequent license revocation actions by the State Board of Education. One case attracted a degree of notoriety; one was relatively unnoticed. One was affirmed; one was reversed.

The two teachers, Jones and Comings, petitioned to the Superior

Court for writ of mandate to compel the State Board of Education to reinstate certification. The Superior Court affirmed the Board's action. Petitioners appealed.

Jones' case stemmed from an arrest for possession of marijuana in Hawaii, to which, as a matter of convenience, he pleaded nolo contendere. However, the incident was picked up and published in the San Francisco Chronicle. Also, Jones' principal testified that she believed the incident and publicity from it would adversely affect the school program and the teacher's effectiveness.

Comings was arrested and convicted in San Diego for possession of marijuana in violation of the California Health and Safety Code. Therefore, the State Board of Education said that his teaching certificate should be revoked ". . . because he had thereby committed 'acts involving immoral and unprofessional conduct,' 'acts demonstrating his unfitness for service' and 'an act or acts involving moral turpitude.'" (Id. at 75.)

Both appellants argued before the courts:

> . . . (1) that as a matter of law, possession of marijuana, or conviction for the crime thereof, cannot amount to "immoral or unprofessional conduct," or to an act or crime "involving moral turpitude," or demonstrating "evident unfitness for service," within the meaning of these terms as used in Education Code Sections 13202 and 13129 . . . (2) that as a matter of proof, the contrary conclusion reached by the trial court . . . is not supported by substantial evidence. (Id. at 78.)

The court's reply, citing Morrison, to the appellant's first contention is worthy of quotation here:

> . . . appellant's first argument misses the mark because it amounts to semantic preoccupation with the statutory terms of "immoral," and the like, as criteria for analyzing the conduct of public school teachers, for disciplinary purposes. This approach is incorrect. As basis for administrative sanctions against persons who hold governmentally issued credentials which qualify them for employment, the statutory terms constitute only lingual abstractions until applied

> to a specific occupation and given content by a reference to fitness for performance of that vocation. (Id. at 80.)

The court found a connection between Jones' act and fitness for service based on publicity of the incident and the probability that the school community would have knowledge of the "immoral" act. Therefore, license revocation was upheld. The State Board and lower court decisions were reversed in Comings' case, basically due to lack of notoriety surrounding the act.

Shoplifting. Caravello v. Board of Education, Norwich City School District, Chenango County, N. Y., 369 N. Y. S. 2d 829 (N. Y., 1975).

This case stemmed from dismissal of a high school guidance counselor on charges of insubordination and conduct unbecoming a teacher. The latter charge is so closely related to immorality that it could have been so classified. Therefore, it is treated here.

The teacher, Dr. Caravello, under the charge of "unbecoming conduct" had been involved in three separate incidents of shoplifting and had a reputation as such in the community.

The tenured teacher was given formal notice of suspension without pay and a hearing was held. The hearing panel found many acts of unprofessional conduct and insubordination. It recommended that Caravello be reinstated at full salary, but pay a fine of $1,000 on the insubordination count. It found that the unbecoming conduct acts, shoplifting, in no way impaired the effectiveness of the counselor's role; therefore, it recommended no penalty.

The Board of Education met in special session, reviewed the hearing panel's recommendations, and rejected the findings. Caravello's contract was terminated. Caravello petitioned the court to review the determination of the State Board of Education to terminate his employment.

The Supreme Court of New York, Appellate Division, ruled that there was sufficient evidence of insubordination as well as conduct unbecoming a teacher. On the issue of shoplifting, the court ruled that such conduct clearly qualifies as conduct unbecoming a teacher even if teaching duties are not affected. It ruled that dismissal was not disproportinate to the offense nor shocking to one's sense of fairness. (Id. at 832.)

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

The Watson case applies 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 drunk 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 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 drunk 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.

The appellant, Watson, based his argument before the court on Morrison v. State Board of Education, contending that his diploma cannot be denied unless he is unfit to teach and that 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 feeling 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.)

Falsification of Records. Caddell v. Ecorse Board of Education, 170 N.W. 2d 277 (Mich. 1969).

Although this case is not directly related to immorality charges or to a criminal offense, the act of lying, or falsification of records in this case, might be treated as an immoral act in another time and place.

The case is included here because it illustrates a court supported case of teacher dismissal on a rather simple act that could conceively be a rather common occurrence.

Caddell, a probationary teacher, was discharged for the following reasons: (1) absent from duty one day in September and one day in November without reporting the adsences; (2) tardy four days in October; and (3) three days in January, Caddell falsified his "sign in" time.

The Board of Education discharged Caddell on the three charges in January. He appealed to the circuit court seeking the balance of the salary due him under his contract, or salary from the date of suspension to date of dismissal.

Caddell contended that his suspension was without adequate cause or reason. The court ruled that the dismissal was within the board's statutory authority. Therfore, the dismissal was upheld with salary granted from date of suspension to date of termination of teacher's employment.

Lying. Goldin v. Board of Education of Central School District No. 1, 359 N.Y.S. 2d 384 (N. Y. 1973).

This case is treated under the previous section of this study: Sexual Misconduct other than Homosexuality, "Fornication Involving Adult Student."

In essence, Goldin was cleared of the charge of immorality concerning sexual relations with a former student. But the court upheld his dismissal on charges of immorality concerning his lying about his relations with the female student. The court maintained that the act of lying reflected on his moral character.

SUMMARY

Thirty-six court cases on teacher dismissals for immorality during the period of 1939 through 1975 were presented in this chapter. The thirty-seven year time period was broken down into two segments.

(1) the thirty-year period under the influence of the Horosko doctrine--1939 through 1969, and (2) the eight year period of 1968 through 1976 under the influence of the Pickering and Morrison decisions.

Five cases were selected to represent the first period and to illustrate the scope of teacher conduct considered immoral by the courts. Such conduct included drinking in public, using profanity at a board meeting, concealment of facts in applying for a job, vulgarity, and criticism of superintendent and board. All cases demonstrated that teachers are 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 demonstrates frequently recurring phrases that convey key concepts held by the judiciary. Such phrases include "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 Jaravello, followed by Pickering in 1968 and culminating with Morrison in 1969, however, the language of the courts showed a change in stance. The court language from 1969-1976 is characterized by such key concepts as, "a right to privacy", act must demonstrate "unfitness for service", "potential for misconduct", "void for vagueness", "rational relationship to objectives sought by the school", "must adversely affect teacher-student relationship", "sufficient evidence of unfitness", "protected by the First Amendment", "a rational nexus . . . ."

There does appear to be 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 the community moral standards. It would appear now that 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. The conduct must adversely affect the teacher-student relationship and the teacher's effectiveness on the job. However the acts of oral copulation and masturbation still stand alone, generally, in and of themselves, as immoral.

None of the courts have said that a teacher cannot be dismissed or that the alleged 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 the courts have demonstrated a concern for a teacher's right to a private life, to procedural due process, and to the right of dissent.

Although court rulings in one jurisdiction are not binding on other state judicial systems, they do have considerable persuasive value, as shown in the cases presented in this chapter.

The thirty-six cases treated here were taken from seventeen states and cover thirty-three types of immoral conduct. California has the greatest amount of immorality litigation, followed by New York and Massachusetts. This comes as no surprise due to the density of population, and, perhaps, their system of handling dismissal due process. Also, California law requires license revocation for crimes involving moral turpitude.

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, "evident unfitness for service" has to be proved by the discharging board before

a dismissal can stand the heat of judicial scrutiny. A more complete summary of case law is contained in the final chapter on summary and conclusions of the study.

Chapter Five contains information from people across the nation who are on the cutting edge of the interface between teachers and the courts. The survey of chief state school officers and state attorney generals will offer some measure of understanding of court trends, agreement of terms, and adjustments taking place in light of recent litigation.

CHAPTER V

NATION-WIDE SURVEY OF CHIEF STATE SCHOOL OFFICERS AND ATTORNEY GENERALS ON PROBLEMS RELATED TO IMMORALITY

During the course of this study, the problem associated with teacher dismissal for immorality has been identified, the problems and views presented in the literature have been examined, and court actions dealing with the issue have been analyzed. As an appropriate culmination of the study, logic dictates, as a final step, an assessment of the nature of the problem as perceived by practitioners in the field. Thus attention is turned to those individuals who are most responsible for interpreting the law and shaping school policy accordingly--the attorney generals and the chief state school officers in the fifty states.

Slightly different but similar questionnaires were mailed to each assistant state school superintendent and to each attorney general in the fifty states. This chapter deals with the purpose, the response, and the analysis of the nation-wide survey.

Purpose of the Survey

The survey and design of the questionnaire items attempted to accomplish five broad purposes: To determine: (1) the nature of the problem of immorality dismissals across the nation as perceived by those individuals in key leadership positions; (2) whether and to what degree there is widespread agreement on the definition and legal concept of

immorality; (3) whether there is agreement between practitioners and the judiciary on what conduct constitutes immorality as legal grounds for dismissal; (4) what conditions must be present for immorality charges to hold in the courts; (5) to locate court cases and materials that may have been missed in the research; and (6) to serve as a final check of accuracy of the examination of the statutes presented in Chapter Three.

Each questionnaire item is presented below followed by an explanation of its purpose.

Survey of Chief State School Officers

Item 1. Is immorality listed in your state statutes as a cause for teacher dismissal? The purpose of this item was to check the accuracy of the survey of the state statutes presented in Chapter Three from most up-to-date information.

Item 2. Do your state statutes define immorality? This item was designed to update and check the accuracy of the survey of state statutes and to see if the interpretation of "definition" held by state officers was comparable to the research.

Item 3. Does your office or any state agency provide a working definition of immorality to local school units? This question attempted to ascertain if any state-level effort was undertaken to clarify, restrict, or define immorality to educators as a matter of "forewarning" teachers of prohibited conduct.

Item 4. Does the relativity or vagueness of the term "immorality" in your state statutes create a major interpretation problem for school administrators and school boards? The purpose here is to determine whether confusion or concern exists over a statutory grounds for teacher dismissal.

Item 5. In your opinion, which of the following terms do you believe could conceiveably constitute immorality on the part of public school teachers? This item is designed to measure agreement on behaviors considered to be immoral and to determine whether practitioners' views are related to the views of the courts.

Item 6. Are you aware of any current efforts by legislative bodies or agencies to amend state statutes to either remove immorality as a cause for teacher dismissal or to define immorality? Here the purpose is to determine whether anyone sees statutory problems related to teacher dismissal.

Item 7. To your knowledge, during the time period 1970-75 have there been any teacher dismissals for immoral conduct in your state? The purpose of this item is to determine the magnitude of immorality dismissals.

Item 8. If you checked "yes" to item #7, did any of the cases reach the courts? The obvious purpose of this item is to measure the amount of litigation in each state in recent years?

Item 9. In view of seemingly conflicting rulings by different courts across the nation on teacher dismissal for immoral causes, has your office or any state agency established guidelines or briefed local school governing bodies concerning legal aspects of determining cause for dismissal on grounds of immorality? Finally, this item was designed to determine if chief state school officers saw immorality as a problem in teacher dismissal to the extent that state-level agencies assisted local units in the legality of such dismissal proceedings.

Survey of State Attorney Generals

Four items on the questionnaire to state attorney generals are comparable to items on the questionnaire to chief state school officers

in order to determine agreement on common items between the two state agencies. Three items are different and are as follows:

Item 1. Does your state have a state commission to hear cases concerning teacher dismissals or license revocation? The purpose of this item was to determine whether there is a trend toward commission hearings in view of due process and other constitutional rights gains made by teachers through the courts in recent years.

Item 2. During the five-year period 1970-1975 have any teachers in your state been dismissed for immorality, or "unprofessional conduct," "good cause," or other terms that might cover immorality? Same as item number seven on other questionnaire.

Item 3. If your answer to question #2 is "yes," did any cases reach the state commission or the courts? Same as item number eight on superintendent's questionnaire.

Item 4. In your opinion, will dismissal of teachers by school boards for "immoral" conduct in their lives outside the classroom stand up in the courts? This item was designed to determine if attorney generals were affected by recent court cases which held that teachers have a right to privacy and that alleged immoral acts must reflect adversely on classroom performance.

Item 5. School boards have the responsibility for determining cause for dismissal on grounds of immorality. In your opinion, which factor or factors listed below must be present in order for the courts to uphold dismissal for immoral causes? Here the purpose was to measure agreement on conditions necessary to sustain immorality dismissals through the courts and to determine if attorney generals agreed with the research findings of court case analysis in this study.

Item 6. Please check the terms below which you believe could conceivably constitute immorality on the part of teachers in public schools. Same as item number five on superintendent's questionnaire.

Item 7. Are efforts underway in your state to amend the statutes to define immorality or remove it as a cause for teacher dismissals? Same as item number six on superintendent's questionnaire.

Responses

Questionnaires were mailed to fifty assistant state superintendents and to fifty attorney generals. Of that number forty-four assistant superintendents responded (86%) and thirty-four attorney generals (68%) responded. Of the thirty-four attorney generals responding, only twenty of those completed and returned questionnaire forms. The other fifteen wrote letters to explain why they were unable to complete the questionnaire. Most of those were prohibited by state statutes from rendering opinions or assistance to private individuals. Accordingly, several attorney generals turned the forms over to the state department of education for response.

An item-by-item summary of responses of attorney generals and chief state school officers follows.

Item 1. Thirty-six chief state school officers stated that immorality was listed in their respective states as a statutory grounds for teacher dismissal. Eight replied "No." A second research of the statutes confirmed the accuracy of information printed in Chapter Three.

Item 2. Four chief state school officers stated that "immorality" was defined in their respective statutes. Thirty-eight replied "No," and two declined. The number four did not agree with the number found from a second search of the statutes. It was determined that the inconsistency

was due to different interpretations of "definition." For example, evidently, some respondents construed the following phrase as a definition of immorality: "crimes involving moral turpitude."

Item 3. Three states, North Dakota, South Dakota, and Florida, reported that state level agencies provide a working definition of immorality to local school units. Forty said "no", and one failed to respond.

Item 4. Respondents in twenty-two states indicate that the vagueness of the term "immorality" as a statutory dismissal grounds presents major problems of interpretation. Sixteen say "no", and six did not respond.

Item 5. Item five of the questionnaire to chief state school officers and its counterpart, item six on the questionnaire to attorney generals, attempted to determine commonality of the concept of immorality, and to see if beliefs of respondents were consistent with the courts.

The results of the responses are presented in Table Four.

Item 6. Assistant state school superintendents in four states (Kentucky, Colorado, Pennsylvania, South Dakota) reported that efforts are underway in their respective states to define "immorality" or to remove it from the statutes as a cause for dismissal. Thirty-seven respondents said "no", three did not reply. Of the twenty responding attorney generals, eighteen said "no" and two did not reply to this item.

Items 7 and 8. Twenty-seven state assistant superintendents stated that there had been teacher dismissals for immorality during the last five years in their respective state, and seventeen of them stated that immorality had reached the courts. Fourteen respondents said that to their knowledge there had not been any dismissal for immorality during the five-year period, and seven stated that no cases had reached the courts. Three respondents did not reply to item seven and twenty did

TABLE IV

OPINIONS OF CHIEF STATE SCHOOL OFFICERS AND STATE ATTORNEY GENERALS ON BEHAVIORS WHICH CONSTITUTE IMMORALITY ON THE PART OF TEACHERS

Behaviors or Acts	*Chief School Officers	**Attorney Generals
Prostitution	32	15
Illicit Use of Drugs	20	13
Financial Laxity	4	
Adultery	19	3
Cohabitation	16	4
Vulgarity	4	4
Inappropriate Sex Instruction	14	2
Improper Use of Position	9	3
Improper Relations with Students	20	8
Improper Relations with Adults	8	2
Cheating	8	5
Notoriety	2	
Domestic Relations	2	
Fornication	20	2
Homosexuality	23	6
Theft	20	11
Fraud	19	12
Profanity	5	5
Promoting Atheism	3	1
Sodomy	26	6
Public Intoxication	11	4
Drinking Alcohol in Public	1	

* 44 Responding
** 20 Responding

not reply to item eight. Among the twenty attorney generals responding, nine stated that there had been immorality dismissals in their respective state in the last five years. One said "no," ten did not know. Five stated that immorality dismissal cases had reached the courts. Two said "no." Twelve failed to reply or checked "unknown."

Item 9. Seven assistant superintendents stated that guidelines were prepared or briefings were held to inform local school governing bodies on the legal aspects of determining cause for dismissal on grounds of immorality. Thirty-six said "no." One failed to respond.

Item 1 on Attorney General's Questionnaire. Thirteen of the twenty respondents stated that their respective state had an established state commission to hear cases concerning teacher dismissals or license revocation. Six said "no" and one declined to respond.

Item 4 on Attorney General's Questionnaire. This item was designed to detect breadth of understanding of much recent court comment on teachers' right to privacy and nexus between private acts and classroom performance. Six attorney generals stated that, in their opinions, dismissals of teachers for acts in their private lives would stand up in court. One said "no;" one declined to reply; and ten said it all depends on the circumstances.

Item 5 on Attorney General's Questionnaire. The purpose of this item was to measure agreement of opinion on the nature of the immoral act and conditions for finding sufficient cause for dismissal to be upheld by the court. The data from item five is presented in Table V.

Analysis of Nation-Wide Survey

Examination of the data collected under items one, two and three supports the findings from the study of the fifty state Education Codes

TABLE V

FACTORS RELATED TO IMMORALITY AND SUCCESSFUL TEACHER DISMISSAL LITIGATION AS VIEWED BY STATE ATTORNEY GENERALS

Relative Factors	Number (20)
The act must show close nexus to classroom performance.	11
The act must be public or subject to public view.	3
The act must be offensive to local values and beliefs.	6
The act must be notorius or attract notoriety.	2
The act must be proven to be detrimental to school image.	7
The act must be suspicious, or merely suspected of occurring.	0
The person must be found guilty of a criminal act by court.	5
The act must be only adjudged by school board to be immoral.	1

and reveals the following conclusions: (1) The vast majority of the states use "immorality" as a grounds for teacher dismissal and license revocation; (2) A very small number of states, one-three, define immorality; and (3) only three states provide a working definition of "immorality" for guidance of local school boards.

The data from item four demonstrates that a notable degree of interpretation problems across the nation exist over the vagueness and relativity of the term "immorality" as a cause of dismissal. Twenty-four respondents report that the vagueness of the term is a problem. Sixteen respondents say that it is not a problem. Data collected under item six on the chief state school officer questionnaire and item seven on the state attorney general questionnaire show that in only four states are efforts currently underway by state legislative bodies or state agencies to remove or refine "immorality" as a statutory cause for teacher dismissal. Three of the states have bills pending before the Legislature on refining or removing immorality from the statutes: Kentucky, Colorado, and South Dakota. Copies of these three bills are placed in appendix E (South Dakota), F (Colorado), and G (Kentucky). Also a bill passed by the 1975-76 California Legislature is shown in appendix H, not because it removes immorality from the statutes as a cause for dismissal but because it relates all license revocation to "fitness to teach," in keeping with many major court decisions.

There were areas of wide agreement and areas of wide disagreement on what teacher behavior constitutes immorality as viewed by assistant state superintendents and state attorney generals (see Table V for data). Both categories of respondents agreed by a large majority that prostitution, illicit use of drugs, theft and fraud will conceivably constitute

immorality. The act of sodomy constitutes the category of widest disagreement. Fifty-eight percent of the school officers see sodomy as immoral; thirty percent of the attorney generals see it as such.

A much larger percentage of the school officer respondents see adultery, cohabitation, improper sex instruction, improper public display of affection with adults, fornication, and homosexuality as immoral conduct than do attorney generals. On the other hand, less state superintendents see profanity as a basis for immorality than do their counterparts.

The most significant finding of the survey concerning behaviors which constitute immorality is the breadth of the perceptions of immorality, ranging from prostitution to financial laxity. Surely, the data help little in attempts to define or restrict the concept of immorality. The data show that almost any behavior can conceivably be considered immoral by someone. This fact has been well demonstrated in recent litigation as shown in preceeding chapters of this study.

Items in the survey instruments concerning the number of teacher dismissal cases which reached the courts during the period 1970-1975 reveal that, from an unduplicated count, thirty states had immorality dismissal cases to reach the courts for adjudication. Most of the respondents reported that the number of court cases was unknown. But the eleven respondents who gave numbers of cases that reached the courts indicated that a total of eighty-three cases did so. One state attorney general indicated that eight teaching licenses had been revoked for immorality during the five-year period. Several respondents cited cases and several sent photocopies of the relevant cases as printed in the state court reports.

The data show that only eight state agencies have taken steps to establish guidelines or to brief local school governing bodies on the legal aspects of teacher dismissal for immoral causes.

Finally, one item on the survey instrument for attorney generals was designed to determine if, in the opinion of the attorney generals, immorality was relative to community values and beliefs, and if there was agreement between attorney generals and court dictum on factors which must be present for immorality to be affirmed by the courts. One-third of those responding believed an act offensive to local values and beliefs would be a factor in establishing immorality. Fifty-five percent of the respondents reported their belief that the alleged immoral act must show a close nexus between the act and classroom performance, and thirty percent believe the act must adversely affect the school image or function. Only one respondent reported that the school board could determine what conduct constitutes immorality.

Although the research in this chapter is, admittedly, based largely on professional opinions, it seems significant because opinions of some people become practices of others. Further, the individuals in state-level leadership positions are on the interface of a changing society and a dynamic judiciary; therefore, they are in the best position to experience first the consequences of social and judicial change and to be knowledgeable of trends and problems. This assessment of chief state school officers and state attorney generals has been an attempt to look at the real world in light of what has been revealed in the literature and examination of court action, and to measure reflective movement in the field.

Further, the nation-wide survey has produced a wealth of relevant

materials, including fourteen copies of state statutes pertinent to the study, complete copies of six related court cases, many citations of relevant cases, and many helpful letters. This part of the research produced several points which will be lifted in the following chapter of summary and conclusions.

CHAPTER VI

SUMMARY AND CONCLUSIONS

From the first step of research to the last page of the written report, this study was focused on one major purpose: to determine the legality of teacher dismissal for immorality. In order to reach such a conclusion the study sought to answer seven questions as set forth under "Analysis of the Problem" in Chapter One. Answers to those critical questions were sought through a study of the current literature, the state statutes, court cases, and from the field through a survey of attorney generals and chief state school officers. This chapter of summary and conslusions is designed to recapitulate in sequential order the major findings, identify trends, and state the conditions under which immorality dismissals will stand the test of court review--that is, to be held legal.

SUMMARY

The problem was identified basically as a conflict of role perception in a period of social change, shifting judicial views, and pluralistic cultural mores. School boards, by tradition, have enjoyed wide discretionary power in determining not only what conduct constitutes immorality, but in discharging teachers for immorality according to the board's discretion. 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.

However, under the auspices of the courts, teachers have made tremendous gains in the last decade in acquiring full citizenship rights. Teachers 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 by teachers 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 of tender years. 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.

At this point in time when individual rights are weighed against the broader social welfare, most often the rights of the individual prevail. This phenomenon of stress and strain, push and pull, between individual rights and the broader social welfare naturally creates a climate for heavy court precipitation, and that we have!

This study examines the judicial climate, and how it affects statutes, writers, and state level practitioners in order to determine trends and make predictions.

Examination of the current 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 Pettit v. State Board of Education thought that oral copulation in semi-public view was not immoral. The school and the court thought 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--no code of conduct that can be adopted by all men, but only this morality and that morality. 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 a pluralistic society of America today many sets of cultural mores and many moralities exist. Therefore whose morals shall prevail? Surely the definitional problems fall on the shoulders of the courts.

When the courts have been perplexed 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.

In at least one case the court has recognized that morality is relative to different communities and geographical areas. In State v. Truby the court stated that that which may be considered immoral in one

part of the country might be considered moral in another, thus the courts must decide such cases. In Sullivan v. Meade County the court found a teacher guilty of immorality in a small rural community in South Dakota for living with a man without the benefit of marriage, while in many other localities such conduct would be protected by the courts under the principle of a right to privacy.

Traditionally, the 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 without question. In so doing, teachers' constitutional rights were often abrogated. However, the situation is different today. Teachers have used the courts to capture their right of first class citizenship. Surely the courts have played a prominent role in the emancipation of teachers. In so doing, the courts 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. Such a view maintains that court decisions outline and detail the policies by which schools operate. There is ample evidence that the judiciary has evolved from a stage 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 is definitely 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 constitutional right of review, that the best interests of the school must be intended, and that arbitrary or capricious use of power will not survive judicial scrutiny. As long as the board's action appears to be 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 dismissal 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. For example, as recent as 1974 a New York court stated that protection of students overrides the property interest of teachers as represented by continued employment.

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

State statutes are the fountainhead of school board authority. Although statutes are not law until they stand the test of court review, 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. Thus, an examination of state statutes is presented

in this study to add perspective to the investigation, to determine legislative concern over the morality of teachers, and to analyze statutory provisions for removal of teachers considered to be immoral.

The examination of the statutes reveals that they range from great particularity to gross generality. However, all state statutes reflect a concern, in one way or another, with the moral fiber of teachers. Immorality is listed as a grounds for dismissal of teachers more often than any other cause. Usually "immorality" is listed under the headings, "Grounds for Dismissal" or "Grounds for License Revocation."

Forty states list immorality as a cause for dismissal under such terms as "immorality," "moral turpitude," "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.

Only one state, Alaska, defines immorality. Several states have incorporated causes for dismissal in statutory provisions aimed at guaranteeing procedural due process.

In addition to immorality, the leading cause, many other terms could cover the grounds equally well.

Thirty-two states go beyond dismissal and list immorality as a grounds for license revocation in permissive language. Nine states go beyond the permissive "may revoke" to the definite "shall revoke" license

for immorality. In most cases, mandatory revocation is based on crime involving moral turpitude.

Although a wide range of language is used in the statutes to discharge teachers, the fact becomes evident that across the nation the various legislatures concerned themselves with five broad areas of teacher conduct: (1) immoral attitudes and behavior, (2) inadequate performance, (3) deviant behavior, (4) violation of laws and regulations, and (5) dishonesty and deceit.

Under the five broad groupings, dismissal of teachers for immoral acts could be covered by at least nineteen statutory terms.

Although the statutory provisions for teacher dismissal have not kept pace with the judiciary, the statutes do reflect a trend toward greater protection of teachers from unfair dismissals and a trend toward less discretion by school boards in determining cause for dismissal, especially in terms of immorality as a cause for dismissal.

During the course of research for this study dismissal cases were examined as far back as 1890. However, the treatment of cases is primarily limited to the time period of 1967 through January 1976 for three reasons: (1) the seventy-nine year period from School District of Fort Smith v. Maury (1890) to Morrison v. State Board of Education (1969) has been adequately examined and published; (2) the period from Jarvella v. Willoughby-Eastlake City School District (1967) to the present date demonstrates a different judicial view of immorality and teacher rights; (3) little research of a comprehensive nature has been published on the topics from Morrison to the present time.

However, as background for the study the Horosko case serves as a point of departure. Five cases are presented under the heading "General

Immorality" to illustrate the prevailing legal doctrine until Jarvella and Morrison. In essence, that doctrine held that teachers were immoral if their public or private conduct offended the morals of the community and set a bad example for the youth whose ideals teachers were supposed to foster and educate. Moreover, teachers laid down certain rights upon entering the teaching profession. Concomitant to that doctrine was the right of school boards to determine immorality, and generally immorality was what board members said it was.

Three landmark court cases in three consecutive years, however, 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 must 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 is attracted on the part of the teacher. These legal points have been raised in almost all subsequent dismissal cases and are still used as standards for judgment in immorality cases.

Homosexuality and other types of sexual misconduct seem to dominate the judicial scene concerned with immorality dismissals.

In the area of homosexuality, eight cases are 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 advances toward children or the act of oral copulation. In two cases the courts found oral copulation so repulsive to the moral conscience, that the act per se constituted immorality and gross unfitness.

Traditionally, in the minds of many, immorality has been equated with sexual misconduct. The great bulk of dismissal cases dealing with sex seem to support the above conclusion. Ten cases dealing with sexual misconduct, other than homosexuality, are treated to illustrate the range of charges and court decisions.

The examination of the cases shows 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 immoral. In the case of adultery, an act that occurred in a remote place not apt to be discovered except through great effort was not found by the court to rebound adversely on the teacher's fitness to teach. But consensual sex relations in a parked car on a dark city street was another matter.

The court upheld the board's right to inquire into the character and integrity of its teachers but prohibited dismissal on inferences of

"wrong doing" 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 turn 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 relationship, therefore not be protected by the court. One case demonstrates that when a student has graduated and reached adult status, cohabitation with a teacher does not necessarily damage the future teacher-student relationship, but the act of lying about the fact was basis for dismissal.

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 forever brand a teacher "immoral" for past behavior and amounted to a penalty against women and not against men.

The act of masturbation is viewed by the court as an offense akin to oral copulation in seriousness. The act per se in a place subject to public view is sufficient to constitute immorality and gross unfitness.

Quite often improper classroom behavior or questionable teaching materials and methods are seen as immoral or unprofessional to the

degree that they reflect on the teacher's moral character. Seven such cases are 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 passes the limit of bad taste and vulgarity and therefore constitute immorality and unfitness.

The courts have ruled that when teachers pursue a bona fide educational purpose with good intent that neither adversely affects the welfare of the school nor the pupils, although poor judgment was shown, a dismissal for immorality for use of obscene materials in class will not likely be upheld by the courts.

However, as shown in Brubaker v. Board of Education, where obscene literature is not directly related to educational purposes, and encourages students to throw off the dull moral discipline imposed on them by their homelife, the teacher's tenure will not be protected by the courts.

The courts generally excuse isolated instances of poor judgment by teachers. Such examples of poor judgment include bringing a gun to school in a coat pocket and using well-intended but highly improper instructional methods.

Six example cases of nonsexual criminal offenses are presented to illustrate the nature of such "immoral" acts and their treatment by the courts. The cases include bribery, possession of marijuana, shoplifting, public intoxication, falsification of records and lying.

The significant legal principles evolving from the criminal cases follow: (1) Acquittal on a criminal charge does not bar subsequent dismissal proceedings, (2) The "exclusionary rule" does not extend to dismissal hearings, (3) Proof beyond a doubt is not needed in dismissal

cases to the degree that it is required in criminal cases.

In the cases of possession of marijuana the courts refused to enter debate on the issue of whether marijuana is good or bad or whether possession thereof is immoral. The teacher's conduct and the notoriety attracted constituted unfitness.

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

The nation-wide survey of chief state school officers and state attorney generals show that the conceptions of conduct that constitute immorality are broad indeed. Most of the population associated immorality with sexual misconduct first and with crimes of theft and fraud second. The survey revealed tthat immorality dismissals are a major concern and that some state level movement is underway to amend statutes, adjust policies, and establish due process procedures in view of recent court actions. Widespread agreement was found on the belief that a close nexus must be shown between the alleged immoral act and teaching performance before a dismissal action would win court affirmance.

CONCLUSIONS

Based on analysis of this study several conclusions emerge:

1. Teachers can be dismissed for immorality. The courts merely have said that constitutional rights must be protected in the process.
2. Many problems of interpretation center around the seemingly undefinable nature of the term "immorality." The term continues to mean different things to different people.
3. It is commonly agreed that morality is related to social and cultural mores. The problem seems to lie in the identification of a common

social norm.

4. The nation is in a transitional period of changing social values, newly-acquired teacher rights, and judicial accessibility.

5. All state legislatures have set forth in different language statutory provisions for providing proper teacher models for children, and grounds for removal of teachers of doubtful moral character.

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

7. The prominent role of the courts in protecting teacher rights is creating adjustment problems on the part of school administrators, school boards, and state legislative bodies.

8. In order for a dismissal for immorality to stand before the court, the alleged immoral conduct must demonstrate that a teacher is unfit to teach.

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

10. The degree of proof needed in dismissal cases is not equal to that required in criminal cases.

11. Non-admittable evidence in criminal proceedings may be used in dismissal proceedings. The "exclusionary rule" does not apply in dismissal cases.

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

13. A teacher may be legally dismissed on the grounds of immorality for many types of homosexuality and sexual misconduct, improper classroom behavior, and criminal offenses.

14. A dismissal for immorality generally will be held legal whenever it can be shown that:

- The act attracts notoriety to the degree that it rebounds adversely on the school community.
- The act is public or subject to public discovery.
- The act is so divergent from the normal human practice that the act per se is immoral. Examples are: oral copulation and masturbation.
- The commission of the act constitutes a crime. Examples are: moral turpitude and possession of illegal drugs.
- 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 life style.
- 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 relationship.

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

- The act is an isolated instant 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.

Immorality is intact as a statutory grounds for dismissal. Dismissals are legal if school boards build their cases well and act within the scope of statutory authority and legal guidelines. Then the courts must decide if the particular conduct is sufficient to constitute immorality and if the teacher is guilty of the charge.

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APPENDICES

APPENDIX A

LETTER TO STATE ATTORNEY GENERALS

1126 South Park Street
Asheboro, North Carolina 27203
January 19, 1976

Honorable Daniel R. McLeod
Attorney General, State of South Carolina
Wade Hampton Office Building
Columbia, South Carolina 29211

Sir:

North Carolina, as most states, lists immorality as a statutory cause for teacher dismissal. I am seeking clarification of the term "immorality" and the possible legality of its use. I have consulted with the North Carolina State Attorney General's Office and the North Carolina Department of Public Instruction concerning my research. They are in support of my research and believe the results will be of value to all concerned.

As a practicing school administrator, I find that the vagueness of the term "immorality" creates many problems in interpretation and administration by school officials and school boards.

Therefore, I am examining the problem on a nation-wide basis in completing a doctoral dissertation at the University of North Carolina at Greensboro. I believe this study will be of value to you, to other educators, and to school boards and attorneys as well as to the North Carolina Attorney General, State Superintendent of Schools and myself.

The research includes analysis of statutory law, case law, current literature, and data from state attorney generals and chief state school officers.

Results of the nation-wide survey as well as copies of the completed dissertation will be mailed to you on request in appreciation of your assistance. If you desire a copy, or copies, please check the appropriate block on the attached questionnaire along with your name and mailing address.

Regardless of whether you desire the results of my study, I shall greatly appreciate your assistance in analyzing a very real problem.

The attached questionnaire contains only a few questions directly related to the problem under study. Please complete whatever items you can to the best of your knowledge and return it in the enclosed envelope before January 30.

Strict confidentiality and anonymity will be maintained. Treatment of the survey data will not identify states or respondents unless express permission is obtained before publication.

I hope you will find that my investigation is of real value to your office as well as to my profession. Thank you very much for your consideration and prompt assistance.

Sincerely yours,

Leonard H. Simmons

APPENDIX B

SURVEY OF STATE ATTORNEY GENERALS ON PROBLEMS RELATED TO TEACHER DISMISSAL FOR IMMORAL CAUSES

SURVEY OF STATE ATTORNEY GENERALS ON PROBLEMS
RELATED TO TEACHER DISMISSAL FOR IMMORAL CAUSES

1. Does your state have a state commission to hear cases concerning teacher dismissal of license revocation? yes____, no____.

2. During the five-year period 1970-75 have any teachers in your state been dismissed for immorality - or "unprofessional conduct,", "good cause," or other terms that might cover immorality? yes____, no____, unknown____.

3. If your answer to question #2 is yes, did any cases reach the state commission or the courts? yes____, no____. If yes, please cite cases:

4. In your opinion, will dismissal of teachers by school boards for "immoral" conduct in their lives outside the classroom stand up in the courts? yes____, no____, relative to situation____.

5. School boards have the responsibility for determining cause for dismissal on grounds of immorality. In your opinion, which factor or factors listed below must be present in order for the courts to uphold dismissal for immoral causes?
The alleged "immoral act" must:
___show close nexus to classroom performance.
___be public or subject to public view.
___be offensive to local values and beliefs.
___be notorious or attract notoriety.
___be proven to be detrimental to school image or function.
___be suspicious, questionable behavior, or merely suspected of occurring.
___be found guilty of a criminal act by the courts.
___only be adjudged by school board to be immoral.
___others: _____.

6. Please check the terms below which you believe could conceivably constitute immorality on the part of teachers in public schools:

___Prostitution	___Cheating	___Fraud
___Illicit use of drugs	___Notoriety	___Profanity
___Financial laxity	___Domestic relations	___Promoting atheism
___Adultery	___Fornication	___Sodomy
___Cohabitation	___Homosexuality	___Public intoxication
___Vulgarity	___Theft	___Drinking alcohol in public

___Sex instruction unrelated to course of study being taught
___Use of position to promote divergent life style
___Improper display of affection with students
___Improper display of affection of adults in public view
___Others (please list)

7. Are efforts underway in your state to amend the statutes to define immorality or remove it as a cause for teacher dismissal? yes____, no____.

APPENDIX C

LETTER TO CHIEF STATE SCHOOL OFFICERS

1126 South Park Street
Asheboro, North Carolina 27203
January 19, 1976

Mr. James S. Gladwell
Deputy State Superintendent
State Department of Education
Building 6, Room 306, Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Gladwell:

In cooperation with the North Carolina Attorney General's Office and the State Department of Public Instruction for North Carolina, I am conducting a research study in relation to the dismissal of school teachers for immoral causes. In searching for the proper contact persons to assure accurate and prompt response, I contacted Dr. Jerome Melton, Deputy State Superintendent, who was kind enough to suggest that you could and would assist me. He joins in sending warm regards to you and requests that you provide us with information needed for this research.

North Carolina, as most states, lists immorality as a statutory cause for teacher dismissal. It is apparent that the term "immorality" creates many problems in interpretation and administration by school officials and school boards. I am attacking this issue on a nation-wide basis as a part of my doctoral program at UNC-Greensboro, I believe this study will be of value to school officials, school boards, state education agencies, and school attorneys. This survey which I am asking you to complete is a part of the total research I will be doing in this area.

Results will be made available to all respondents, local school administrative units in North Carolina, and the State Education Agency. I think my efforts will be beneficial to all concerned, and I am sincere in soliciting your assistance.

A self-addressed envelope is attached for your convenience in responding. Your response on or before January 30 will be greatly appreciated. Strict confidentiality will be maintained and no respondent will be identified.

Thank you for your consideration and assistance.

Sincerely yours,

Leonard H. Simmons

APPENDIX D

SURVEY OF CHIEF STATE SCHOOL OFFICERS

SURVEY OF CHIEF STATE SCHOOL OFFICERS ON
PROBLEMS RELATED TO TEACHER DISMISSAL FOR IMMORAL CAUSES

1. Is immorality listed in your state statutes as a cause for teacher dismissal? yes____, no____.

2. Do your state statutes define immorality? yes____, no____.

3. Does your office or any state agency provide a working definition of immorality to local school units? yes____, no____.

4. Does the relativity or vagueness of the term "immorality" in your state statutes create a major interpretation problem for school administrators and school boards? yes____, no____.

5. In your opinion, which of the following terms do you believe could conceivably constitute immorality on the part of public school teachers?

___Prostitution	___Cheating	___Fraud
___Illicit use of drugs	___Notoriety	___Profanity
___Financial laxity	___Domestic relations	___Promoting atheism
___Adultery	___Fornication	___Sodomy
___Cohabitation	___Homosexuality	___Public intoxication
___Vulgarity	___Theft	___Drinking alcohol in public

___Sex instruction unrelated to course of study being taught
___Use of position to promote divergent life style
___Improper display of affection with students
___Improper display of affection of adults in public view
___Others (please list)

6. Are you aware of any current efforts by legislative bodies or agencies to amend state statutes to either remove immorality as a cause for teacher dismissal or to define immorality? yes____, no____.

7. To your knowledge, during the time period 1970-75 have there been any teacher dismissals for immoral conduct in your state? yes____ (number____), no____.

8. If you checked "yes" to item #7, did any of the cases reach the courts? yes____ (number____), no____.

9. In view of seemingly conflicting rulings by different courts across the nation on teacher dismissal for immoral causes, has your office or any state agency established guidelines or briefed local school governing bodies concerning the legal aspects of determining cause for dismissal on grounds of immorality? yes____, no____. Comment:

APPENDIX E

PENDING BILL BEFORE THE LEGISLATURE OF SOUTH DAKOTA ON REFINING OR REMOVING IMMORALITY FROM THE STATUTES

HOUSE BILL NO. 782

(( )) = Deletion
((( ))) = New Material

Introduced by: Representative Radack

FOR AN ACT ENTITLED, An Act to amend SDCL 13-42-9 and 13-43-15, relating to the revocation or suspension of a teachers certificate and dismissal by the local board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 13-42-9 be amended to read as follows:

13-42-9. The superintendent of elementary and secondary education shall have the power to revoke or suspend any certificate for ((any)) cause ((which would have prevented its issue, or after dismissal for plain violation of contract, gross immorality, incompetency, or flagrant neglect of duty)). The superintendent of elementary and secondary education shall suspend any certificate for a period not to exceed one year for breaking or jumping a contract, if such suspension is requested by the school

board.

Section 2. That § 13-43-15 be amended to read as follows:

13-43-15. A school board may dismiss any teacher at any time for ((plain violation of contract, gross immorality, incompetency, or flagrant neglect of duty)) (((cause))).

APPENDIX F

PENDING BILL BEFORE THE LEGISLATURE OF COLORADO ON REFINING OR REMOVING IMMORALITY FROM THE STATUTES

SENATE BILL NO. 43. BY SENATORS H. Fowler, Minister, Allshouse, Anderson, Bishop, Cisneros, Comer, Cooper, Gallagher, Hughes, Kinnie, Kogovsek, McCormick, MacManus, Plock, Schieffelin, Stockton, and Strickland; also REPRESENTATIVES Lucero, Miller, Barragan, Boley, Hinman, Munson, Quinlan, and Sears.

CONCERNING TEACHER CERTIFICATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 22-2-109 (1), Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

22-2-109. State board of education - duties. (1) The state board of education shall:

(a) Evaluate and determine and publish its findings as to which Colorado institutions of higher education meet the requirements of an accepted institution of higher education for the preparation of teachers pursuant to section 22-60-103 (1);

(b) Evaluate and determine and publish its findings as to which programs of study in Colorado institutions of higher education meet the requirements of an approved program of teacher preparation pursuant to section 22-60-103 (2);

(c) Adopt rules and regulations which prescribe standards for the evaluation of teacher preparation programs;

(d) Adopt rules and regulations for a procedure through which statements of partial completion of approved programs may be combined, pursuant to section 22-60-104 (5) (b);

(e) Make periodic visits as may be necessary to the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

22-60-110. Grounds for annulling, suspending, or revoking certificate or letter of authorization. (1) If any person obtains a teacher's certificate or letter of authorization through misrepresentation or fraud or through misleading information or untruthful statement submitted or offered with the intent to misrepresent or mislead or to conceal the truth, such certificate or letter of authorization may be annulled by the department of education in the manner prescribed in section 22-60-111.

(2) A certificate or letter of authorization may be suspended or revoked in the manner prescribed in section 22-60-111, notwithstanding the provisions of subsection (1) of this section:

(a) When the holder has been determined to be mentally incompetent by a court of competent jurisdiction; except that the certificate or letter of authorization held by a person who has been determined to be mentally incompetent by a court of competent jurisdiction shall be revoked or suspended by operation of law without a hearing, notwithstanding the provisions of section 22-60-111;

(b) When the holder is found guilty of a violation of any law of this state or any municipal law of this state involving unlawful sexual behavior pursuant to section 18-3-401, C.R.S. 1973;

(c) When the holder is found guilty of a violation of any law of this state, any municipality of this state, or law of the United States involving the illegal sale of narcotics;

(d) When the holder is found guilty of a felony in this state or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, when the commission of said felony, in the judgment of the state board of education, renders him unfit to perform the services authorized by his certificate or letter of authorization.

(3) The state board of education may suspend or revoke a certificate or letter of authorization if the state board finds and determines that the holder thereof has become professionally incompetent or guilty of unethical behavior.

(4) The state board of education shall promulgate appropriate rules and regulations defining the standards of unethical behavior and professional incompetency.

22-60-111. Procedure - denial, suspension, annulment, or revocation - certificate or letter of authorization. Procedures for the denial, suspension, revocation, or annulment of a

APPENDIX G

PENDING BILL BEFORE THE LEGISLATURE OF KENTUCKY ON REFINING OR REMOVING IMMORALITY FROM THE STATUTES

IN HOUSE

REGULAR SESSION 1976

HOUSE BILL NO. 16

TUESDAY, JANUARY 6, 1976

The Interim Joint Committee on Business Organizations and Professions authorized prefiling of the following bill with a recommendation for passage, and designated Representatives Terry L. Mann and William Donnermeyer as sponsors on behalf of the committee.

AN ACT relating to occupational and professional licensing and public employment for ex-criminal offenders.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby declares that it is the policy of the Commonwealth of Kentucky to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

Section 2. A new section of KRS Chapter 446 is created to read as follows:

As used in this Act, unless the context requires otherwise:

(1) "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the Commonwealth of Kentucky, its agencies, or political subdivisions.

(2) "License" includes all licenses, permits,

certificates, registrations, or other means required to engage in an occupation which are granted or issued by the Commonwealth of Kentucky, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

(3) "Public employment" includes all employment with the Commonwealth of Kentucky, its agencies, or political subdivisions.

(4) "Conviction of crime or crimes" shall be limited to convictions of felonies, high misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

(5) "Hiring or licensing authority" shall mean the person, board, commission, or department of the Commonwealth of Kentucky, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

Section 3. A new section of KRS Chapter 446 is created to read as follows:

(1) Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of

a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

(2) In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

(a) The nature and seriousness of the crime or crimes for which the individual was convicted;

(b) The relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;

(c) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

(3) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought.

(4) Sufficient evidence of rehabilitation for a

person who has served out his term or who has received final discharge from a parole or probation program may be established by the production of:

(a) A copy of the local, state, or federal release order; and

(b) Evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution, or in the case of a paroleе or probationer, final discharge from parole or probation supervision and that while on parole or probation the person complied with all terms and conditions of probation or parole;

(5) In the case of a person on active parole or probation supervision sufficient evidence of rehabilitation may be shown by:

(a) Evidence showing that the person has complied fully with the terms and conditions of the parole or probation order for a period of at least one year; and

(b) The written recommendation of the person's parole or probation officer that the person be permitted to engage in the named employment or occupation.

(6) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(a) The nature and seriousness of the crime or crimes for which convicted;

(b) All circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(c) The age of the person at the time the crime or crimes were committed;

(d) The length of time elapsed since the crime or crimes were committed; and

(e) All other competent evidence of rehabilitation and present fitness presented, including, but not limited to; letters of reference by persons who have been in contact with the applicant since his release from any local, state, or federal correctional institution or parole or probation program.

Section 4. A new section of KRS Chapter 446 is created to read as follows:

The following criminal records shall not be used, distributed, or disseminated by the Commonwealth of Kentucky, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sen-

tence can be imposed, or in which the fine was less than $50.

Section 5. A new section of KRS Chapter 446 is created to read as follows:

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) The grounds and reasons for the denial or disqualification;

(2) That the individual has the right to a hearing if written request for hearing is made within sixty (60) days after service of notice;

(3) The earliest date the person may re-apply for a position of public employment or a license; and

(4) That all competent evidence of rehabilitation presented will be considered upon re-application.

Section 6. A new section of KRS Chapter 446 is created to read as follows:

A person may be denied a license on the grounds that he does not possess good moral character, as specified in Section 7 of this Act.

Section 7. A new section of KRS Chapter 446 is

created to read as follows:

(1) A person possesses good moral character unless he has done any of the following:

(a) He has done any act which, if done by a licensee of the occupation in question, would be grounds for the suspension or revocation of his license.

(b) He has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(c) No act shall be grounds for the denial, revocation or suspension of a license, however, which does not have a substantial relationship to the functions and responsibilities of the licensed occupation and in the same manner and to the same effect as provided in Section 3 of this Act.

(2) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar grounds relating to an applicant's character, reputation, personality, or habits unless the applicant's character, reputation, personality or habits directly contravene the standards of good moral character as defined in subsection (1).

Section 8. A new section of KRS Chapter 446 is created to read as follows:

Within thirty (30) days after final action by the hiring or licensing authority following a hearing, an

aggrieved party may petition the Franklin Circuit Court for review. The court shall decide the case on the record, and shall not set aside the hiring or licensing authority order except for errors of law, or upon a finding that the hiring or licensing authority's action was arbitrary or capricious.

Section 9. A new section of KRS Chapter 446 is created to read as follows:

The provisions of this Act shall previal over any other laws, rules, and regulations which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes.

Section 10. A new section of KRS Chapter 446 is created to read as follows:

The provisions of this Act shall not apply to:

(1) The practice of law; but nothing in this section shall be construed to preclude the Court of Appeals, in its discretion, from adopting the policies set forth in this Act.

(2) The provisions of KRS 61.300.

APPENDIX H

AMENDED BILL FROM THE LEGISLATURE OF CALIFORNIA ON REFINING OR REMOVING IMMORALITY FROM THE STATUTES

AMENDED IN ASSEMBLY JANUARY 20, 1976

AMENDED IN ASSEMBLY JANUARY 6, 1976

CALIFORNIA LEGISLATURE—1975-76 REGULAR SESSION

ASSEMBLY BILL No. 820

Introduced by Assemblyman Berman

February 17, 1975

REFERRED TO COMMITTEE ON EDUCATION

An act to amend Section 13202 of the Education Code, relating to certificated employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 820, as amended, Berman (Ed.). Schools: certificated employees: revocation.

Under current statutory law, the Commission for Teacher Preparation and Licensing is required to revoke or suspend the credential of a person for, among other things, immoral or unprofessional conduct or evident unfitness for service. Under current decisional law, the conduct in question must relate to fitness to teach.

This bill would amend the statute to specify that such conduct must be related to the employee's fitness to teach ~~or classroom performance~~.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 13202 of the Education Code is amended to read:

13202. The Commission for Teacher Preparation and Licensing shall revoke or suspend a credential for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service, provided, that no conduct or acts shall be deemed to be immoral or unprofessional conduct or evident unfitness for service unless such conduct is related to the certificated employee's fitness to teach ~~and the employee's classroom performance~~.

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