

# The Journal of Law and Education

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Volume 16 | Issue 1

Article 4

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Winter 1987

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### Recommended Citation

Patricia J. Larke, Criminal Conduct: A Cause for Discipline of Teachers, 16 J.L. & EDUC. 63 (1987).

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# Criminal Conduct: A Cause for Discipline of Teachers

PATRICIA J. LARKE\*

## I. Introduction

In earlier years, teachers who were involved in some form of criminal conduct were removed from their teaching positions. Criminal behaviors that have led to certificate denial or revocation and contract termination include: alcohol and drug violations, larceny, theft, shoplifting, bribery, illegal gambling and manslaughter. In cases presented by administrative bodies, their actions and arguments have been based on one premise: The teacher's conduct can set a poor example for students. Today courts are ruling that involvement alone of a teacher in a criminal action does not necessarily warrant a dismissal or revocation or denial of certificate. In many cases, the court considers such questions: (1) Does the alleged criminal conduct of the teacher affect the teacher's ability to maintain the respect of students, parents, community and educational staff? (2) Is the teacher's teaching ability and performance unaffected by the criminal conduct?

This article will address pertinent factors considered by the court in rendering judicial decisions of teachers involved in criminal offenses such as: alcohol and drug violations, larceny, theft, shoplifting, bribery, illegal gambling and manslaughter. As is evident by cases presented in this article, the courts consider the seriousness of the offense, the notoriety given the conduct and the substantial evidence presented by administrative bodies.

## II. Alcohol and Drug Violations

### A. Alcohol

In a 1966 Arizona case,<sup>1</sup> a teacher was arrested on charges of being drunk and disorderly and committing lewd and lascivious acts. The court ruled that the board acted arbitrarily in dismissing the teacher after both charges had been dismissed by the magistrate. The teacher's record showed that the teacher had an excellent character. The court stated that since this incident was the only "blot on his record," there was not good cause for the dismissal.

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

In 1976, the Supreme Court of Montana reversed and remanded a decision of the lower court upholding the dismissal of a teacher for driving while intoxicated.<sup>2</sup> The teacher had been arrested and charged with driving while intoxicated (his third offense) and driving without a valid driver's license. The board dismissed the teacher on the basis of the alleged offenses. The board had sent one letter giving notice of dismissal; however, during a subsequent hearing, the board based its decision on charges advanced in a second letter. The court rejected the second letter as admissible evidence and stated that the initial letter did not establish adequate grounds for dismissal; therefore, the dismissal of the teacher was overturned.

In a 1982 Tennessee case,<sup>3</sup> the state supreme court affirmed the decision of the lower court reinstating a teacher who was arrested and convicted for driving under the influence of alcohol. The teacher had been involved in an accident while coming from the home of a distressed friend. During the attempt to comfort the friend, the teacher drank one strong vodka. Returning home, she felt dizzy and tried to pull to the side of the road but ran into a ditch. The board, in its decision, claimed that the teacher's conduct had an adverse effect upon her students. However, the court held that the evidence of detrimental effect was insufficient, and thus no justification for discharge existed. Similarly, in a recent North Carolina case, the court reversed the school board's decision dismissing a teacher for neglect of duty and habitual or excessive use of alcohol. The court found that the evidence presented by the board was insufficient and held for the teacher.<sup>4</sup>

On the other hand, the court in Washington upheld the dismissal of a teacher for furnishing alcohol to a minor.<sup>5</sup> The incident began when two 16-year-old girls came to the teacher's office and asked to go to his home to play pool. There the girls produced a bottle of alcohol and gave it to the teacher as a Christmas present. At their urging, the teacher had a drink. Later, the teacher saw them pouring their own drinks from the bottle and drinking beer from his refrigerator but did nothing to stop them. One of the girls became intoxicated and passed out on his bed. While he was attempting to wake her, she vomited, wet the bed and removed her clothing. After about 20 minutes he convinced her to dress, and then joined the other girl who had remained in the other room. The teacher drove the girls to the sober girl's house and left them at the front door. The girl who had been inebriated called her mother and said she had been raped. The mother called the police and took her daughter to the hospital to be examined.

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2. *Lindgren v. Board of Trustees, High Sch. Dist. No. 1*, 171 Mont. 360, 558 P.2d 468 (1976).

3. *Turk V. Franklin*, 640 S.W.2d 218 (Tenn. 1982).

4. *Faulkner v. New Bern-Cavern County Bd. of Educ.*, 65 N.C. App. 483, 309 S.E.2d 548 (1983).

5. *Coupeville Sch. Dist. No. 204 v. Vivian*, 677 P.2d 192 (Wash. Ct. App. 1984).

While the evidence in both the criminal and administrative proceedings established that the coach did not engage in sexual misconduct with either girl, he pleaded guilty to one count of furnishing liquor to a minor. The lower court held that this was insufficient to warrant discharge, but the appellate court ruled that this incident of "temporary impairment" was enough, stating "public schools are not established for retaining unqualified teachers."<sup>6</sup>

### B. Drugs

A California court in 1972 decided two cases concerning evidence by which teachers were dismissed after having been arrested and convicted for marijuana possession. In one case,<sup>7</sup> a teacher was seeking reinstatement of his teaching certificate, which the court approved because the board was not able to provide sufficient evidence that the teacher's conduct adversely affected students or other teachers.<sup>8</sup> However, in the second case, the court upheld the dismissal of the teacher when the evidence supported the teacher's unfitness to teach in that his conduct established an adverse effect upon the students. The teacher was charged with marijuana possession in another state and admitted being a drug user. The court stated that the teacher's conduct "attained as a degree of timely notoriety among persons...students, teachers, parents and others..."<sup>9</sup>

Although school boards may believe that teachers who become involved with drugs should be summarily dismissed, courts do not always share this viewpoint. Again in a California case, a teacher was reinstated after possession of a single marijuana plant found on a walk.<sup>10</sup> In a Kansas case, a teacher was reinstated after being acquitted of the charge of possession of marijuana.<sup>11</sup> Also, a Pennsylvania court<sup>12</sup> ordered reinstatement of a teacher dismissed for possession of marijuana upon the teacher's entry of a plea of *nolo contendere*.<sup>13</sup> In a 1984 Florida case, an appeals court reversed the decision of a lower court and ordered reinstatement of a teacher.<sup>14</sup> The court ruled that the mere arrest of the teacher for possession of illegal alcohol and marijuana did not justify the teacher's dismissal.

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6. *Id.* at 320.

7. *Comings v. State Bd. of Educ.* 23 Cal. App. 3d 94, 100 Cal. Rptr. 73 (Ct. App. 1972).

8. *Jefferson Union High Sch. Dist. v. Jones.* 23 Cal. App. 3d 94, 100 Cal. Rptr. 73 (Ct. App. 1972).

9. *Comings*, *supra* note 7 at 74.

10. *Board of Trustees of Santa Maria, Joint Union High Sch. Dist. v. Judge*, 50 Cal. App. 3d 920, 123 Cal. Rptr. 830 (1975).

11. *Bogart v. Unified Sch. Dist. No. 298 of Lincoln County* 432 F. Supp. 895 (D. C. Kan. 1977).

12. *Warren County Sch. Dist. of Warren County v. Carlson*, 53 Pa. Cmwlth. 568, 418 A.2d 810 (1980).

13. A plea of "*nolo contendere*" or no contest, permits the court to impose sentence as if the defendant had been convicted, but it does not amount to an admission of guilt. It is utilized when the defendant deems guilt but, for one reason or another, does not wish to go to trial. It may be entered only in the discretion of the trial court, i.e., the trial judge may refuse to accept it, requiring the defendant to plead "guilty" or "not guilty".

14. *Baker v. School Bd. of Marion County*, 450 So.2d 1194 (Fla. App. 1984).

The courts are more likely to uphold employment termination or certificate revocation when the teacher's actions are a threat to students. The following cases illustrate this point. In 1976 in New Mexico, a teacher's dismissal was upheld after her conviction of distributing marijuana while she was a university student.<sup>15</sup> A 1979 Georgia case involved the dismissal of a teacher for possession of three drugs: marijuana, cocaine and glutethimide.<sup>16</sup> The teacher was relieved of her duties after being transferred several times because of the publicity of her drug charges. The court agreed with the hearing officer that the conduct of the teacher was harmful to the school system and that it inhibited her ability to "impart moral values to her students."<sup>17</sup>

In Florida a teacher was dismissed for furnishing marijuana and beer to students.<sup>18</sup> Similarly, in Illinois an elementary teacher was dismissed for possession of marijuana.<sup>19</sup> The court stated that the teacher's possession of marijuana adversely affected his ability to perform as a teacher.

Of course, drug use may represent a much more serious offense than possession. It is not surprising, then, that the court's attention is often directed to the role model implications in such situations, as shown by the next selection of cases.

A teacher's certificate was revoked in New York for failing a medical examination.<sup>20</sup> The teacher was placed on a Methadone outpatient program after being diagnosed as a heroin user. The court rejected the argument that the license should be reinstated merely because the state had spent a great deal of money on the drug addiction program. The argument further claimed that the money would be wasted if addicts have no incentive to reform and are treated as outcasts of society. The court, while expressing sympathy with the teacher's position, pointed out that the relationship between teacher and student is a sensitive one involving many variations of interaction, which heroin addiction threatened.

In 1971 in California, a teacher's dismissal also was upheld by the court.<sup>21</sup> The teacher submitted an affidavit explaining her long and beneficial use of marijuana. Students learned of the document, which immediately attracted public attention. Evidence was presented supporting the charge of unfitness to teach and the court ruled for the school board.

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15. *Bertrand v. New Mexico State Bd. of Educ.*, 88 N. M. 611, 544 P.2d 1176 (1976).

16. *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979).

17. *Id.* at 320.

18. *Woodard v. Professional Practices Council*, 388 So.2d 343 (Fla. App. 1980).

19. *Chicago Bd. of Educ. v. Payne*, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1981).

20. *Anonymous v. Board of Exam. of Bd. of Educ. of City of N. Y.*, 318 N.Y.S.2d 163 (1970).

21. *Governing Bd. of Nicasio Sch. Dist. v. Brennan*, 18 Cal. App.3d 396, 95 Cal. Rptr. 712 (1981).

### III. Other Criminal Offenses

#### A. *Larceny*

In Oregon in 1963, a teacher was denied a five-year elementary teaching certificate.<sup>22</sup> The applicant had been convicted and had served a sentence for grand larceny for several offenses committed at age twenty-four while serving as a night watchman for the concern from whom the property was taken. The teacher argued that since he was released from jail and received full restoration of his gubernatorial acts, existence of good moral conduct was implied. The board argued that the teacher did not furnish evidence of the good moral character deemed necessary to establish fitness to serve as a teacher. The lower court ruled for the teacher, but the appeals court agreed with the board, stating that the lower court had erred because the evidence showed the teacher lacked good moral conduct.

Nonetheless, in a more recent Washington case, a conviction for grand larceny was held not to constitute sufficient cause for dismissal.<sup>23</sup> The teacher had been discharged from his position after being convicted of grand larceny for purchasing a stolen motorcycle. The court held that it was not shown that the teacher's conduct on which the conviction was based adversely affected the teacher's fitness to teach; therefore, the case was remanded for an evidentiary hearing about the teacher's competency to teach.

#### B. *Theft*

A 1977 Delaware case was initiated by a teacher who was dismissed for immorality based on the teacher's conviction and guilty pleas of felonious restraint, aggravated assault, theft and violation of the Uniform Firearms Act.<sup>24</sup> According to the evidence presented, the teacher held a victim at gunpoint in the parking lot of a supermarket. The teacher got in the car with the victim and forced a cloth with a liquid over her mouth and nose. Being in a semi-conscious state, the victim heard the keys being taken from the ignition, something being done to her purse and afterwards heard the car door being opened. After the teacher pleaded guilty to the charges, he was terminated. The court held that the statute listing "immorality" as a reason for terminating a teacher was not constitutionally vague and that the school board's decision to dismiss the teacher was supported by evidence.

A recent Missouri case likewise resulted from the dismissal of a teacher for

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22. Bay v. State Bd. of Educ., 233 Or. 601, 378 P.2d 558 (1963).

23. Hoagland v. Mount Vernon Sch. Dist. No. 320, 23 Wash. App. 650, 597 P.2d 1397, *aff'd*, 523 P.2d 156 (1981).

24. Skripchuk v. Austin, 379 A.2d 1142 (Del. Super. 1977).

engaging in "immoral" conduct.<sup>25</sup> The teacher took school property without consent. The three incidents that constituted immoral conduct were: (1) taking a teapot, (2) taking \$20 in gate receipts from a basketball game, and (3) taking a set of books. The court agreed with the school board, stating that the incidents constituted immoral conduct and responded:

The taking of property belonging to another without consent, notwithstanding its return when confronted with such wrongdoing, breaches even the most relaxed standards of acceptable human behavior, particularly so with regard to those who occupy positions which bring them in close contact with young persons of an impressionable age.<sup>26</sup>

### C. Shoplifting

A 1980 Pennsylvania case was brought by a teacher dismissed for shoplifting.<sup>27</sup> Although the teacher contended that the board, as a matter of law, erred in finding that her shoplifting constituted "immorality," the court did not agree and stated:

The term immorality, while not defined in a Code, has been judicially defined as "a course of conduct" that offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Clearly shoplifting falls squarely within the definition.<sup>28</sup>

In 1981, the Kansas Court heard another case initiated by a teacher involved in shoplifting incidents.<sup>29</sup> The teacher took articles from a shopping center and grocery store. The teacher, in her defense, included testimony from her psychiatrist that indicated the teacher had a metabolic disorder that was triggered by certain foods. Allegedly, the disorder caused alterations in her state of consciousness, and the shoplifting incidents occurred during one of these times. However, the board's argument stated that the teacher had lost the respect of the community, students and school board. The court held for the board and remanded the case to the district court with necessary directions.

### D. Bribery

A 1974 New York case involved allegations that a state agency improperly had denied a teacher's reemployment pending the outcome of a revocation hearing initiated by the Commissioner of Education.<sup>30</sup> Initially, the teacher received a leave of absence to serve as a member of the county legislature.

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25. *Kimble v. Worth County R-III Bd. of Educ.*, 669 S.W.2d 949 (Mo. App. 1984).

26. *Id.* at 953.

27. *Lesley v. Oxford Area School Dist.*, 54 Pa. Cmwlth. 120, 420 A.2d 764 (1980).

28. *Id.* at 776.

29. *Gillett v. Unified Sch. Dist. No. 276, ETC.*, 227 Kan. 71, 605 P.2d 105 (1980).

30. *Pordum v. Board of Regents of State of N.Y.*, 491 F.2d 1271, (1974); *cert. den.*, 419 U.S. 843 (1974).

While on leave, the teacher had been convicted of, and served a prison term for, conspiring to promote bribery of public officials. After being paroled, the teacher asked his former district to reemploy him as a teacher; however, the Commissioner of Education ordered the school not to honor the request because of a pending certificate revocation proceeding. The teacher alleged this denied him due process of law. The court held for the Commissioner of Education and stated:

Here, the commissioner asserts the interest of the well-being of children at Wilson Elementary School. He does so in a conclusory manner, but we presume that this general interest encompasses Pordum's possible corrupting influence, the possibility that the students might not respect Pordum, and the disruption of the education process which might result if Pordum was removed from the classroom subsequent to the hearing after having taught several weeks. While the first of these dangers might appear to be improbable, we must remember that school pupils are very impressionable.<sup>31</sup>

### ***E. Gambling***

In Pennsylvania in 1977, a teacher was dismissed for "immorality" resulting from a federal charge of operating an illegal gambling business.<sup>32</sup> The teacher argued that the term "immorality" was constitutionally vague; however, the court rejected the argument and held for the school district.

### ***F. Manslaughter***

A 1977 Florida case involved the dismissal of a teacher after she pleaded guilty to manslaughter for killing her husband with a shotgun.<sup>33</sup> The court, in rendering its decision, held that the teacher's guilty plea was sufficient cause for dismissal.

## **IV. Decision Trends**

1. Recent decisions of the court have not upheld dismissals for driving while intoxicated or excessive use of alcohol, but have sustained disciplinary action against teachers who give alcohol to students.

2. The courts are more than likely to uphold certificate revocations and contract terminations for drug violations, especially in situations where students are aware of the teacher's action. As contrasted to alcohol, possession and use of what is commonly referred to as drugs is illegal. The courts have, in a number of instances, accepted the argument that removal of the teacher as unfit is justified by the improper example set by drug possession and usage.

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31. *Id.* at 1284.

32. *Baker v. School Dist. of City of Allentown*, 29 Pa. Cmwlth. 453, 371 A.2d 1028 (1977).

33. *Kiner v. State Bd. of Educ.*, 344 So.2d 657 (Fla. App. 1977).



3. In nearly all cases, the courts have upheld the removal of teachers found guilty of stealing. The only exception was a conviction for possession of stolen property with no clear evidence that the teacher knew the property was stolen.

4. The pattern of decisions in cases involving other crimes such as bribery, illegal gambling and manslaughter parallel that of theft conviction.

### **V. Educational and Legal Implications**

1. The criminal offense must be related to job performance such that administrative bodies can show that the offense has a detrimental effect on the student-teacher relationship.

2. Arrest and conviction of a crime alone does not justify removal of a teacher; rather, the evidence must be proven that the offense impaired the teacher's effectiveness.

3. With respect to "the crime," the court may view the nature of "the crime" and its circumstances and the teacher's class association with students, because one of the teacher's roles is to be a model for students.

### **VI. Conclusions**

Society believes that teachers, because of the nature of their position, have the responsibility for developing and shaping the attitudes and character of children. Teachers, no doubt, accept this responsibility; but, as they begin to assert their constitutional rights, they question society's right to control their personal lives as illustrated in the cases in this article. As teachers gain more control over their personal lives, school authorities continue to attempt to discipline teachers for being involved in criminal offenses.

The courts, while concurring that teachers share the same rights and freedom as enjoyed by all citizens, have nonetheless held that when evidence is presented that the criminal conduct shows a connection between the offense and the teacher's effectiveness, then cause exists for disciplining of the teacher. However, courts of record do not share a common decision about criminal conduct cases. They tend to support the rationale that teachers serve as role models for students and, therefore, are subject to termination for crimes involving moral turpitude.