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# Counterpoint: An Introduction

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"Counterpoint" is intended as a forum for critical commentary about important issues in education law. As the first focus for this feature, two contributors — a practicing attorney representing the Pennsylvania State Education Association and an education law professor at the University of Wisconsin — respond to Donal Sacken's article, "Bad Management Makes Bad Law," which appeared in the Spring 1988 issue of the *Journal.*[1]

The Sacken article analyzed *Eckmann v. Board of Education,*[2] in which a federal district court ruled that the dismissal of a teacher who (allegedly as a result of rape) bore and raised a child out of wedlock violated her constitutional right to privacy. Sacken argued that the school board's bad decision resulted in bad law, purportedly precluding school districts from discouraging unwed pregnancy among staff members. He contended that substantive due process provides a more just basis for resolving such cases.

In her rejoinder, Mary Catherine Frye suggests that Professor Sacken interpreted *Eckmann* too broadly. Pointing out that the constitutional right to privacy is not absolute, she asserts that *Eckmann* is not an impenetrable wall of policy, but rather a high hurdle of proof. Rather than using "immorality" as a pretext, school districts will have to prove that they have a compelling justification and no less restrictive alternative. Sacken's proffered alternative of substantive due process, in effect, shocks Frye's conscience and is fundamentally unfair to teachers who otherwise are faced with abortion or adoption.

In her rejoinder, Julie Underwood accuses Sacken of incorrectly characterizing *Eckmann.* Rather than focusing on the constitutional right to privacy, the defendant school district attacked the pretext part, concerning its dismissal decision. As a fellow holder of the academic license, Underwood engages Sacken "mano a mano" with regard to both the Constitution and common sense, thrusting that the constitutional right of privacy is not contingent on marital or employment status and parrying

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1. 17 J.L. & EDUC. 281 (1988).
2. 636 F. Supp. 1214 (N.D. Ill. 1986).

that both a *per se* rule and a particularistic inquiry into the circumstances of each pregnancy (*e.g.*, rape or artificial insemination) are, in effect, immoral.

The Sacken case note and the independent but intertwined rejoinders by Frye and Underwood reveal the persistent tension between localized values inculcation and national individual rights, the fuzziness of substantive due process, and the obfuscating effect of Eckmann's alleged rape.