

University of Dayton Law Review

Volume 10

Number 3 *Symposium: The Legal System and
Homosexuality: Approbation, Accommodation,
or Reprobation?*

Article 6

5-1-1985

Survey of School Principals Regarding Alleged Homosexual Teachers in the Classroom: How Likely (Really) Is Discharge

Joshua Dressler
Wayne State University

Follow this and additional works at: <https://ecommons.udayton.edu/udlr>



Part of the [Law Commons](#)

Recommended Citation

Dressler, Joshua (1985) "Survey of School Principals Regarding Alleged Homosexual Teachers in the Classroom: How Likely (Really) Is Discharge," *University of Dayton Law Review*: Vol. 10: No. 3, Article 6. Available at: <https://ecommons.udayton.edu/udlr/vol10/iss3/6>

This Symposium is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in University of Dayton Law Review by an authorized editor of eCommons. For more information, please contact mschlangen1@udayton.edu, ecommons@udayton.edu.

SURVEY OF SCHOOL PRINCIPALS REGARDING ALLEGED HOMOSEXUAL TEACHERS IN THE CLASSROOM: HOW LIKELY (REALLY) IS DISCHARGE?*

Joshua Dressler**

I. INTRODUCTION

The law has been no friend to gay¹ people. This fact has now been well-documented.² Legal rules mirror the deep anxiety felt by many persons in society, and even felt by judges who must interpret the law,³ toward homosexual people.

At no time, perhaps, is such anxiety more explosively expressed than when the question is raised whether gay people should be permitted to serve as teachers in elementary and secondary schools. A majority of Americans apparently⁴ believe that gay people should, as a class, be excluded from the teaching profession.⁵ Nonetheless, gay people do

* Copyright 1985, Joshua Dressler. All rights reserved.

** Professor of Law, Wayne State University Law School. B.A., University of California, Los Angeles (1968); J.D., University of California, Los Angeles (1973).

1. The words "gay" and "homosexual" will be used interchangeably throughout this article. Sometimes, the terms are not treated as precise synonyms. The former may apply to those individuals who willingly admit publicly to their sexual orientation, whereas the latter applies to those who do not accept their own orientation, or who do so but hide it. Comment, *Homophobia, "Manifest Homosexuals" and Political Activity: A New Approach to Gay Rights and the "Issue" of Homosexuality*, 11 GOLDEN GATE U.L. REV. 635, 637 (1981).

2. For general summaries of the law pertaining to homosexual persons, see Rivera, *Recent Developments in Sexual Preference Law*, 30 DRAKE L. REV. 311 (1980-81); Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L.J. 799 (1979).

3. Dressler, *Judicial Homophobia: Gay Rights Biggest Roadblock*, CIV. LIB. REV., Jan.-Feb. 1979, at 19.

4. The most recent national surveys were conducted in 1977. See *infra* note 5 and accompanying text. Public attitudes may have changed since that time.

5. Sentiment favors excluding homosexual persons from the teaching profession by a 65%-27% margin, at worst. *Gallup Poll*, N.Y. Times, July 17, 1977, § 1, at 34, col. 1. A Harris poll found the sentiment to be 55%-34% against their right to teach. *Harris Survey*, Minneapolis Star, July 18, 1977, at A5, col. 1. Local surveys are in apparent agreement. See, e.g., *Minnesota Poll*, Minneapolis Tribune, Aug. 28, 1977, at A1, col. 2 (Minnesotans believe gay people are a threat to children by a slight 47%-42% margin); Community Relations Commission, City of Tulsa, Oklahoma, *Sexual Preference Study* 74 (1976) (Tulsans oppose gay people serving as teachers by a 66% to 28% margin) [hereinafter cited as *Sexual Preference Study*]. But see *supra* note 4.

Public opposition to gay teachers must be distinguished from public views regarding the right of homosexual people to equal legal employment rights generally, which most Americans favor. *Gallup Poll*, *supra*, § 1, at 34, col. 1 (gay people entitled to equal rights, 56%-33%); *Harris*

teach, and have presumably always taught, school children. Most such teachers even today, however, presumably hide their sexual orientation for fear that disclosure will jeopardize their status as teachers.⁶

Neither statutes nor case law explicitly authorize what the public wants, yet gay teachers must continue to fear their dismissal from public schools. Education statutes generally prohibit immoral or unprofessional conduct by teachers,⁷ but such statutes do not explicitly exclude homosexuals.⁸ It is generally agreed that public school teachers may

Survey, supra, at A5, col. 1 (employment discrimination opposed, 54%–28%).

The reason for the distinction is beliefs, probably held by most Americans, regarding homosexual people and homosexuality. The most serious factor is the widespread belief that homosexual people, especially males, prey on children. Dressler, *Gay Teachers: A Disesteemed Minority in an Overly Esteemed Profession*, 9 RUT.-CAM. L.J. 399, 413 (1978); Hendryx, *In Defense of the Homosexual Teacher*, 56 VIEWPOINTS IN TEACHING & LEARNING 74, 75 (Fall 1980). A catchy phrase used in electoral campaigns to oppose "gay rights" was "homosexuals can't reproduce, so they must seduce." Dressler, *supra* note 3, at 22.

This concern is not well-founded. Persons who receive sexual gratification from contact with children—pedophiliacs—are neither homosexual nor heterosexual *per se*. DEPARTMENT OF HUMAN RESOURCES, PRELIMINARY REPORT OF THE TASK FORCE ON SEXUAL PREFERENCE TO THE OREGON STATE LEGISLATURE 19 (1977); E. DE SAVITSCH, *HOMOSEXUALITY, TRANSVESTISM AND CHANGE OF SEX* 13 (1958). Pedophiliacs generally have contact with children of the same and the opposite sex. P. GEBHARD, J. GAGNON, W. POMEROY & C. CHRISTIANSEN, *SEX OFFENDERS* 272 (1965). Nor do statistics support the special concern regarding gay people. See Dressler, *supra*, at 413 (and statistics cited therein); Comment, *supra* note 1, at 660–61 (and statistics cited therein); *Should Homosexuals Be Allowed to Teach?*, MCCALL'S, Mar. 1978, at 100, 162 [hereinafter cited as MCCALL'S] (reporting that the complaints to principals of homosexual contact by teachers with students were infrequent—only 7% of principals reported such complaints—and far less common than complaints of heterosexual contact—13% reported such complaints).

Another concern when the issue is whether gay people should be allowed to serve as educators is that teachers are expected to serve as positive role models for children. Dressler, *supra*, at 415–17. Yet, homosexual persons are thought by many to be mentally ill or to manifest atypical gender mannerisms. *Id.* at 408, 410; MCCALL'S, *supra*, at 160 (quoting one educator as saying that "consciously or unconsciously, a [homosexual] teacher . . . can do [irreparable] damage in these formative years;" another asked rhetorically, "Should an embezzler or a mugger or a dope pusher teach school?"); L.A. Times, June 15, 1977, at 6, col. 1 (a state legislator is quoted as stating that "You know normal people in the majority have a right" to keep their children away from the influence of homosexual teachers); Okla. H. Res. 1054, 39th Leg. (1984) ("homosexuality is ungodly, unnatural and unclean" and is "an unfit example for the children in the State of Oklahoma to follow"). These concerns are misguided. See Dressler, *supra*, at 408, 410.

6. E.g., Trent, *On Being a Gay Teacher: My Problems—And Yours*, PSYCHOLOGY TODAY, Apr. 1978, at 136 (in which "Trent," a pseudonymous teacher, indicated that he had "always felt it necessary to hide what I am."). I have also conducted a national survey of homosexual teachers, which is yet to be published. Most such teachers report they have hidden their sexual orientation.

7. E.g., CAL. EDUC. CODE § 87331 (West 1978).

8. The closest that any statute comes to explicitly excluding homosexual teachers is OKLA. STAT. tit. 70 § 6-103.15 (Supp. 1984), which purports to authorize refusal of employment or reemployment, or to dismiss or suspend any teacher who engages in "public homosexual conduct or activity," *id.* § 6-103.15(B)(1), and who is found "unfit, because of such conduct or activity, to hold a position as a teacher." *Id.* § 6-103.15(B)(2). "Public homosexual activity" is defined as any sexual act "committed with a person of the same sex," and "not practiced in private." *Id.* § 6-103.15(1). This section, then, does not purport to exclude all gay teachers, but only to exclude a teacher who commits a public homosexual act and is found to be unfit to teach, *inter alia*, because

not be excluded from their occupation unless it is shown that they fail to meet standards rationally tied to their fitness to teach.⁹ Homosexual-ity *per se* is supposedly insufficient.¹⁰

What "supposedly" is, however, is not always so. The few published cases of discharge of "gay teachers"¹¹ which have been litigated in the appellate courts¹² belie the assertion that homosexual teachers, as homosexuals, need not be concerned. In one startling case,¹³ James Gaylord, a twelve-year veteran high school teacher with an exemplary record,¹⁴ was discharged because he admitted to his superiors, when

of "the likelihood that such activity . . . may adversely affect students or school employees." *Id.* § 6-103.15(C)(1). Thus, public conduct, and not status, is required.

Unless a person is defined as "homosexual" simply because he or she has committed a "homosexual" act, it is possible to view this statute as going more to homosexual conduct than to homosexual persons *per se*. *E.g.*, *Morrison v. State Bd. of Educ.*, 1 Cal. 3d 214, 218 n.4, 461 P.2d 375, 377 n.4, 82 Cal. Rptr. 175, 177 n.4 (1969) (in which M committed a "limited, non-criminal physical relationship which petitioner described as being of a homosexual nature," but which expert testimony indicated was M's only homosexual act in his life); *Board of Educ. v. Jack M.*, 19 Cal. 3d 691, 696, 566 P.2d 602, 604, 139 Cal. Rptr. 700, 702 (1977) (testimony that teacher was not a homosexual despite the allegation of a homosexual act). Regarding the definitional problem, see *infra* note 50 and accompanying text.

The Oklahoma statute would also permit dismissal of those unfit teachers guilty of "public homosexual conduct" (as distinguished from "activity"), defined as "advocating, soliciting, imposing, encouraging, or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees . . ." OKLA. STAT. tit. 70, § 6-103.15(A)(2). This provision, of course, implicates first amendment rights, and could result in dismissal of heterosexual or homosexual teachers who become involved in political "gay rights" activities, such as activities to decriminalize homosexual acts. The constitutionality of the statute has been attacked in recent litigation. *National Gay Task Force v. Board of Educ.*, 729 F.2d 1270 (10th Cir. 1984) (declaring constitutional the "public homosexual activity" provision, but holding unconstitutional on its face the "public homosexual conduct" provision), *aff'd mem. by an equally divided Court*, 105 S. Ct. 1858 (1985).

9. *Morrison*, 1 Cal. 3d at 225 n.15, 461 P.2d at 383 n.15, 82 Cal. Rptr. at 183 n.15; *Gaylord v. Tacoma School Dist. No. 10*, 88 Wash. 2d 286, 290, 559 P.2d 1340, 1342, *cert. denied*, 434 U.S. 875 (1977). See generally *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957) (Constitution requires that a person not be excluded from a public job unless there is a showing "that he fails to meet standards rationally connected with fitness or capacity to function in the particular job"); *Norton v. Macy*, 417 F.2d 1161, 1164 (D.C. Cir. 1969); *Richardson v. Hampton*, 345 F. Supp. 600 (D.D.C. 1972).

10. *Morrison*, 1 Cal. 3d 214, 461 P.2d 375, 82 Cal. Rptr. 175; *Gaylord*, 88 Wash. 2d 286, 559 P.2d 1340; see *Norton*, 417 F.2d at 1161 (regarding homosexual person in Civil Service position).

11. The words "gay teachers" are in quotation marks because the teachers in question may or may not be properly identified as homosexual; they may have allegedly committed homosexual acts. Regarding the difficulty of defining relevant terms, see *supra* note 8 and *infra* note 50 and accompanying text.

12. For a full discussion and analysis of these cases, see Dressler, *supra* note 5, at 417-34.

13. *Gaylord*, 88 Wash. 2d 286, 559 P.2d 1340.

14. *Gaylord v. Tacoma School Dist. No. 10*, 85 Wash. 2d 348, 353-54, 535 P.2d 804, 807-08 (1975) (Rinegold, J., concurring and dissenting); see also *Gaylord*, 88 Wash. 2d at 294, 559 P.2d at 1345 (describing evidence as "uncontroverted" that teacher was "a competent and intelligent teacher").

cross-examined, that he was gay. The Washington Supreme Court upheld his discharge despite the absence of any allegations of misconduct or of public disclosure of his orientation by the teacher. Ultimately, his dismissal was upheld for two reasons. First, one student and three of Gaylord's colleagues testified that they objected to Gaylord's presence.¹⁵ Second, three administrators speculated that his continued presence, in light of the then public knowledge¹⁶ of the teacher's sexual orientation, would be a disruptive influence on school proceedings.¹⁷ Although the harshness of the *Gaylord* case is extreme, the author's previous analysis of the eight published gay teacher cases resulted in the following conclusion:

[U]nfitness may be proven if the teacher's conduct or status: (1) precludes him from teaching a statutorily required "subject" such as morality or law and order; (2) jeopardizes the physical well-being of the students; (3) renders him an inadequate role model; or (4) is known or [is] likely to become known to parents, students or colleagues, thereby causing a disruption of school activities. . . .¹⁸

The author determined that the quality and quantity of evidence required to convince a school board (and, ultimately, a court) of the presence of one or more of these factors varied.¹⁹ Nonetheless, the recorded cases demonstrated that the evidence required could be quite minimal; discharge could be based on little more than speculative concerns about *future* harm, at times little more serious than the *possibility* that public hostility at the retention of the teacher would cause disruption in the school.²⁰

Based on reported cases, therefore, and certainly when coupled with public attitudes,²¹ gay teachers appear to have reason to be deeply concerned about the security of their jobs. The decision to hide sexual orientation seems to constitute occupational self-defense.²² Being a ho-

15. *Gaylord*, 88 Wash. 2d at 298, 559 P.2d at 1346.

16. Gaylord never publicized his sexual orientation. Public knowledge was the result of the school board's action against him. The Washington Supreme Court blamed Gaylord, however, because "by seeking out homosexual company in his private life he took the risk his homosexuality would be discovered" and because he "granted an interview" to a student who wanted to talk to Gaylord about the boy's "homosexual problems." *Id.* at 297-98, 559 P.2d at 1346. Gaylord never admitted his orientation to the boy, but the student came away with the "impression" Gaylord was homosexual. *Id.* at 298. Later, the boy disclosed his beliefs to school officials, who in turn confronted Gaylord. *Id.* at 298, 559 P.2d at 1346. Gaylord admitted his orientation when asked. *Id.* at 294, 559 P.2d at 1342.

17. *Id.* at 298, 559 P.2d at 1347.

18. Dressler, *supra* note 5, at 430.

19. *Id.*

20. *Id.* at 430-34.

21. See *supra* notes 4-5 and accompanying text.

22. It is possible, of course, that judges in future cases would demand more evidence of

homosexual seems, notwithstanding the "hornbook" law, to come very close to constituting a legal basis for loss of a teaching position. A lawyer, asked for legal advice on the matter, would likely provide such a warning.

Nonetheless, those of us in the legal profession must be cautious when we provide advice to clients based on limited experience. The eight²³ appellate cases are, after all, only eight cases. What has happened to other gay teachers who were disciplined or discharged, and who did not appeal their fate? How many cases are there of gay teachers who *won* their actions? More relevantly, how serious is the risk to the teacher that any action will be initiated? Are school administrators, as a whole, as hostile to gay teachers as the reported cases might imply? And, are the concerns expressed by school officials in prior cases accurate? That is, does disclosure of a teacher's homosexual background, or of a teacher's homosexual acts, cause disruption in the school?

This article reports the results of a national survey that begins to answer some of these questions. The author knows of no similar study.²⁴ Two classes of information are provided: (1) the *opinions* of secondary school principals regarding the legal rights of gay teachers to practice their profession; and (2) the *experiences* of the same respon-

unfitness than prior courts have required. Many judges in the past have been unable to separate their personal disgust regarding homosexuality from their role as neutral arbiters. Dressler, *supra* note 3. Future judges may view the issues differently. There is some evidence that today's law students, especially female students, are more supportive of the right of homosexual persons to serve as teachers. Dressler, *Study of Law Student Attitudes Regarding the Rights of Gay People to Be Teachers*, 4 J. HOMOSEXUALITY 315 (1979).

23. There are more than eight published opinions dealing with teachers who are homosexual, or who allegedly committed homosexual acts; however, only eight cases deal substantively with the question of discharge of specific gay teachers. For a full discussion of these cases, see Dressler, *supra* note 5, at 417-34.

There are other noteworthy cases, however. One involves the propriety of a school board order that a veteran teacher submit to psychiatric examination because he assumed the presidency of a "gay rights" political organization. *Gish v. Board of Educ.* 145 N.J. Super. 96, 366 A.2d 1337 (App. Div. 1976) (upholding the order), *cert. denied*, 434 U.S. 879 (1977). The constitutionality of a statute which would permit discharge of heterosexually or homosexually oriented teachers who are involved in "gay rights" activities recently reached the United States Supreme Court. *National Gay Task Force*, 729 F.2d 1270, *aff'd mem. by an equally divided Court*, 105 S. Ct. 1958.

This article is only concerned with classroom teachers. Nonetheless, the issues discussed herein may confront auxiliary staff. *E.g.*, *Rowland v. Mad River Local School Dist.*, 730 F.2d 444 (6th Cir. 1984), *cert. denied*, 105 S. Ct. 1373 (1985). In that case, a nontenured high school vocational guidance counselor was discharged because she told various teachers she was bisexual.

24. *McCall's* did question public elementary and secondary school principals on the subject. *McCall's*, *supra* note 5, at 162. However, the *McCall's* study asked only one attitudinal question, "If you learned that one of your teachers was homosexual, would you consider that automatic grounds for dismissal?" For the results, see *infra* note 38.

dents in dealing with teachers whom they knew or thought were homosexual.

This information should be helpful to all of the relevant parties to the issue. Although each gay teacher must evaluate the risks of disclosure based on the information he or she²⁵ possesses regarding the *particular* school and community in which he or she works, information on how these cases are generally handled should be helpful in measuring the risks. School administrators, too, should find it helpful to know what other administrators believe, and what experiences they have had. Lawyers, asked to provide advice to a school official or concerned teacher, should be able to provide more insight than can be amassed from eight published appellate decisions.

The information may be of most value, however, to those who wish to consider the wisdom of the current law regarding gay teachers. Although objectivity is difficult when the issues inevitably kindle strong emotions,²⁶ the findings of this study shed considerable light on an obscure area of law. The results raise serious questions about how cases regarding allegedly gay teachers are handled, how they should be handled, and whether statutes pertaining to sexual misconduct in the classroom should be changed.

II. METHODOLOGY OF STUDY

The author mailed identical questionnaires to 200 public junior high and high school principals in each of the fifty states.²⁷ This distribution represented contact with approximately .9% of the public secondary schools in the United States.²⁸ Four schools were selected randomly from each state. Principals were informed that the information requested would ultimately be published. They were assured of com-

25. The term "he or she" is used in this article because of the policy of the *University of Dayton Law Review* to erase the use of sexist gender in the language of the works it publishes. To date, most (see *Rowland*, 730 F.2d 444 (female guidance counselor)) prior appellate cases of discharge of homosexual teachers involved male, not female, teachers. The study reported in this article partially involves attitudes of principals to a hypothetical male homosexual teacher. It cannot be known for sure whether attitudes differ regarding female homosexual teachers.

26. Public feelings about homosexuality are intense in their negativity. *E.g.*, CBS-TV Poll, reported in Sexual Preference Study, *supra* note 5, at 5 (two-thirds expressed disgust or fear of homosexuals; 10% admitted hatred); Survey by Indiana University's Inst. for Sex Research, reported in Sexual Preference Study, *supra* note 5, at 5 (two-thirds considered homosexuality "obscene and vulgar," and half believed homosexuality could cause the "downfall of civilization"); CBS-TV Poll, in *TIME*, Oct. 24, 1969, at 82 (more than half of the American public believes homosexuality is more dangerous than abortion, adultery, or prostitution).

27. The names of principals and the addresses of the schools were obtained from PATTERN'S AMERICAN EDUCATION (D. Moody ed. 1981).

28. In 1981, there were 22,619 public junior high schools and high schools in the United States. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES 136 (1984).

plete anonymity, which they received. Completed questionnaires were returned in self-addressed stamped envelopes that were provided. Principals who refused to complete the questionnaire were asked to return the blank form; this way it could be ascertained whether the forms had reached their intended recipients. The questionnaires were mailed to the principals on March 1, 1982. Responses arrived from March 11, 1982 through September 15, 1982. Principals were invited to write comments at the end of the questionnaires.

As table 1 indicates, nearly four-fifths of the questionnaires were returned; a little more than two-thirds of those returned—54% of the questionnaires originally mailed—were completed. Of the completed questionnaires, 69% came from high school principals and 31% from junior high school principals (table 2²⁹).

Table 1 Responses

Total questionnaires completed	200
Number of questionnaires returned	157
Number of questionnaires completed	107

Table 2 Source of Responses

High school principals	69%
Junior high school principals	31%

Although precise information is impossible to obtain due to the anonymity of the process, postmarks on returned, completed questionnaires indicate that forty-four of the fifty states apparently were represented in the results. The six "no-shows" were less-populated states.³⁰ Because each state received four questionnaires regardless of its size, it is possible, despite the no-shows, that the results are biased toward small states and, inferentially, less populated and rural parts of the country. If this skewing occurred, one might assume that the rural bias would result in findings of less tolerance toward homosexuals by principals and administrators, and in more community hostility to the presence of teachers³¹ than would be found in a study that more accurately represented the views of those in larger cities where more teachers are

29. Throughout this article parenthetical references to the tables and to the data reported therein will be retained in the text rather than shifted into footnotes. While this may sometimes look unorthodox or interrupt the flow, it is felt that such an arrangement will make cross-referencing less cumbersome for the reader.

30. Those states were Alaska, Maine, Montana, New Hampshire, Rhode Island, and Wyoming.

31. If community hostility is intense enough, it is conceivable that there would then be more substantial disruption of school activities that would impair the ability of the teacher to successfully conduct classes.

employed.³² However, a postresult investigation of the cities to which the questionnaires were sent indicated that, consistent with the random approach of the selection process, questionnaires were very frequently sent to relatively urban areas, even in generally smaller states. This fact, coupled with the "no-shows" among small states, suggests that there may be no bias regarding particular sizes of communities.³³

III. RESULTS AND DISCUSSION

A. Principals' Opinions

The public as a whole generally opposes the employment of gay people as teachers of school children.³⁴ Judges, too, frequently express strong emotions about homosexuality.³⁵ Law students—among whom will be found the future judges—appear to be less hostile to the rights of gay teachers.³⁶ Judges, however, only get involved after school principals, or other administrators, initiate actions which ultimately may be litigated. The views and conduct of public school principals, therefore, represent an essential key to the way in which the issue is likely to be resolved.

In an effort to evaluate the views of principals, respondents were asked their opinions regarding the revocation of the license of a "previously exemplary" six-year veteran, male homosexual teacher in ten hypothetical circumstances. The circumstances ran the gamut from discharge of a teacher for mere status, to a case involving illegal sexual conduct by the teacher with a child. Some of the hypotheticals were loosely based on published opinions in gay teacher cases, while others were not. Many of the questions were essentially the same as those asked of law students in a 1979 study.³⁷ The selection of the hypotheticals, therefore, makes it possible to compare the stated views of principals with those of the students and, inferentially, of prior court opinions. The results are provided in table 3.

32. There is no direct evidence, however, to support the hypothesis that persons living in rural areas are more likely to be intolerant of homosexuals than city dwellers.

33. The author retained a list of the cities to which questionnaires were sent. However, the names of respondents and school names and addresses were previously purged from the list in order to assure the promised anonymity.

34. See *supra* note 5 and accompanying text.

35. See *supra* note 3 and accompanying text.

36. See *supra* note 22.

37. Dressler, *supra* note 22.

Table 3 Principals' Opinions

"In which of the following cases, *standing alone*, would you favor revocation of the license of a previously exemplary, six-year veteran male homosexual teacher (HT)?"

1. HT is a homosexual.	8%	(4%)
2. HT committed noncriminal, consensual private homosexual act with an adult.	12%	(5%)
3. HT committed a <i>criminal</i> , consensual private homosexual act with an adult, although HT was not convicted of crime.	30%	(10%)
4. HT was <i>convicted</i> of a consensual private homosexual act with an adult.	64%	(29%)
5. HT had "consensual" homosexual relations with a minor (but not a student).	78%	
6. HT had nonconsensual homosexual relations with a minor (but not a student).	87%	
7. HT had homosexual relations with a schoolchild.	93%	(86-95%)*
8. HT told students of his homosexuality.	46%	(19%)
9. HT expressed the belief <i>in class</i> that homosexuality was not wrong.	42%	
10. HT is publicly involved in off-campus "gay rights" activities.	24%	(12%)

Note: Percentages in parentheses represent the percentage of *law students* who favored revocation in an equivalent question.

*Law student questionnaire divided up question 7 into two questions, one involving "consensual" conduct, the other nonconsensual. The figures in parentheses are for those two questions, respectively.

Generally, principals are less apt to desire the discharge of homosexual teachers than is the general public, but they are consistently more stringent, where comparison is reasonably possible, than are law students. Approximately one out of twelve principals claims to favor the equivalent of professional capital punishment—revocation of the teaching license—of a homosexual teacher, solely on the basis of his or her status (question 1, table 3).³⁸ Dismissal upon this basis is technically unlawful.³⁹ One respondent conceded this when he wrote on the questionnaire, "I'm very biased. Our society tolerates homosexuality, but I cannot." One respondent said that "We should cut off their testicles." One principal expressed some of the commonly held views, albeit

38. This is a much lower figure than that found in the *McCall's* survey, which reported that 42% of the principals favored automatic dismissal. McCALL's, *supra* note 5, at 162. The question asked in that survey was more general than the one used in this article. See *supra* note 24.

39. See *supra* notes 7-10 and accompanying text. The word "technically" used in the text is important, however. See *supra* notes 11-20 and accompanying text.
Published by eCommons, 1984

unsupported,⁴⁰ about homosexuals and their "influence" on children's sexual orientation:

On a personal level, I believe that homosexuality is morally wrong; on a professional level I believe that heterosexuality is the sociological norm. . . . Because of my moral beliefs and because heterosexuality is the societal norm, I would expose children only to a heterosexual model among the adults entrusted with their education. While I do pity the homosexual, and recognize their rights as citizens, I do not recognize those rights as extending to any area of employment where their sphere of influence, *overt* or *subversive*, encompasses the developing attitudes and beliefs of youth. The classroom is too impenetrable a sanctuary in which to risk the healthy being infected by the ill or *socially crippled*. (emphasis added).

The vast majority of principals, however, say they would not fire gay teachers merely because of their orientation. One wrote: "I have been a high school principal for more than 24 years, with student enrollment of 2000+ students. Drinking, and heterosexual misconduct, has [sic] been a *much more* serious problem."

Firing-on-status may, as a practical matter, be more common than the results to question 1 imply. A gay teacher, like a heterosexual one, could be sexually inactive. Presumably, however, he or she is as apt to be sexually active as is a heterosexual teacher. It seems likely, therefore, that homosexual teachers will commit a private, consensual homosexual act with another adult. Twelve percent (question 2, table 3) of the principals, or 50% more than the number of principals who would fire a teacher simply on status grounds, claim to favor license revocation merely because the teacher committed such a private legal homosexual act with an adult. In short, although some principals purport to reject firing-on-status, more than one out of every ten principals claim to favor loss of job if the teacher acts out that status in the same manner in which heterosexuals conduct their sexual lives.⁴¹

40. Those unsupported views—that gay people seduce children, are mentally ill, and are poor role models—are discussed in *supra* note 5.

41. In *Gaylord v. Tacoma School Dist. No. 10*, 88 Wash. 2d 286, 293, 559 P.2d 1340, 1344, cert. denied, 434 U.S. 879 (1977), the court conceded the possibility that Gaylord was sexually inactive (or what it confusingly called a non-"overt" homosexual). However, applying contract construction rules, it concluded that ambiguities "should be construed against the party using the language" (Gaylord). "If Gaylord meant something other than homosexual in the usual sense . . . he had an adequate opportunity at trial to [say] so." *Id.* at 294, 559 P.2d at 1344. Consequently, the court assumed Gaylord was committing sodomy. Although sodomy was then legal in Washington (although illegal prior to Gaylord's discharge), the court said that this "no more relieves that conduct of its immoral status than would consent to the crime of incest." *Id.* at 297, 559 P.2d at 1346.

It may be concluded, therefore, that the facts of *Gaylord* generally fit questions 1, 2, or 3 in table 3.

The criminality of homosexual conduct, however, seems to have a profound effect on the respondents' attitudes. The number of principals who favor revocation rises 250% when the same act is simply relabeled as criminal (question 2 versus 3, table 3), although no conviction is alleged. Nearly one-third of the principals then favor license revocation. When the teacher is convicted of the private adult act (question 4, table 3), the number of revocation-oriented principals doubles again. *Nearly two-thirds of all principals favor the revocation of gay teachers' licenses if they are convicted of consensual, adult sexual activity.* In light of the fact that such conduct has been largely decriminalized, these results imply that gay teachers employed in states which continue to treat such conduct as criminal are in significantly greater jeopardy than their counterparts in more liberal states, even when such laws are not enforced.⁴² This result is consistent with the view that teachers, as role models, must respect the law—all laws—and that the factual violation of the law (even without the legal label of "conviction") is a damning factor.

Once one turns from sexual acts with adults to sexual conduct with children, principals are, much less controversially, inclined to favor license revocation.⁴³ There is some evidence, however, of line-drawing by some respondents between homosexual acts with a minor *nonstudent* and the ultimate breach of trust, sexual relations with a school child (question 5 and 6 versus question 7, table 3).

Most gay teachers' sexual conduct will remain private, of course. The greater concern of such a teacher pertains to what limits he or she must place on social and political activities. What should a gay teacher do if a student, perhaps also gay, asks the teacher for guidance?⁴⁴ What if a teacher is asked what he or she thinks of homosexuals? Can the teacher safely talk? Can the educator become involved in political activities related to the subject?⁴⁵

The message from the respondents (questions 8–10, table 3) is that a significant minority—in one case (question 8) nearly a majority—believe that gay teachers ought to lose their licenses, rather than merely be warned or disciplined, if they admit their orientation to students,⁴⁶ express nonjudgmental views about homosexuality, or become

42. Thus, even if we assume that sodomy laws are not enforced, a principal may assume that a homosexual teacher is sexually active, thereby converting the case to a question 3 situation. This would mean that 30% of the principals believe dismissal is appropriate. This is not an insignificant number.

43. Frequently respondents wrote in the margin, "same if *heterosexual* contact," or the equivalent.

44. James Gaylord was confronted by this problem. See *supra* note 16.

45. This is a particular problem confronting Oklahoma teachers. See *supra* note 8.

46. According to McCall's, *supra* note 5, at 162, only 23 principals among 4,000 questioned.
Published by eCommons, 1984

involved publicly in off-campus "gay rights" political activities. Principals are substantially more severe in these attitudes than are law students.

Generally, then, gay teachers would appear to be justified in fearing the attitudes of principals, certainly if their sexual activities become known, and especially if homosexuality is a crime in the jurisdiction in which they teach. Such teachers may also need to avoid expressing even neutral views about homosexuality in the classroom⁴⁷ and to avoid becoming involved in otherwise politically protected activities. In light of the fact that respondents were asked whether a good teacher should *lose his license* to teach in the hypothetical circumstances, it is also reasonable to assume that more principals than shown here would favor discipline of a less extreme nature.

Of course, the statistics only tell us how respondents *think* they would act, not how they necessarily would respond in a real case. One may wonder, for example, whether the principals' reactions would be affected by factors not noted in the general hypotheticals. Would they act more harshly if the teacher were not "exemplary"? More relevantly, perhaps, how important would pressure from the community be on their attitudes? It may be hypothesized that with a poorer teacher, or with substantial community hostility, there would be an *increase* in the negative response.

On the other hand, it is easier to favor revocation of the license of a hypothetical, rather than a real, teacher. Perhaps the respondents would not act so harshly when confronted with real cases.⁴⁸ Indeed, attitudinal opinions may change as a result of prior experiences. The study provides some insight into this possibility. Some, but not all, of the respondents reported that they had dealt previously with cases of allegedly homosexual teachers in the classroom. The differences in stated views between the "experienced" and "inexperienced" respondents are reported in table 4. The comparisons are mixed. However, it is especially intriguing that principals who have never had to deal with real cases of allegedly gay teachers were six and one-half times more apt to express support for revocation on the ground of status (question 1) than were principals previously confronted with the issue. Although

tioned reported knowing of instances in which teachers had discussed their homosexuality in class.

47. The questionnaire did not indicate in what class the hypothetical discussion of homosexuality occurred. A more thorough questionnaire ought to consider this problem. For example, would a principal consider it more acceptable to discuss the subject in a sex education class or "current events" class (where it is arguably more relevant) than if the teacher discusses it in a mathematics class? Also, suppose the reason for the teacher's comment is that students are calling another child a "faggot"? Hopefully, any follow-up to this article will investigate these permutations on the issue.

48. This appears to be the case. See *infra* notes 50-57 and accompanying text.

more analysis is needed, one may hypothesize from this that experience with the subject results in slightly more tolerance;⁴⁹ at least, once the principal realizes that he or she has a gay teacher, and that nothing bad has happened as a result of it, the administrator's views may be muted.

Table 4 Answers to Hypotheticals, in Light of Experience

	Experienced Respondents	Inexperienced Respondents
1.	2%	13%
2.	9%	15%
3.	23%	38%
4.	62%	65%
5.	81%	75%
6.	87%	87%
7.	96%	90%
8.	45%	47%
9.	36%	47%
10.	23%	25%

Note: See table 3 for questions.

B. Principals' Experiences

Respondents were also questioned about their experiences as principals at their present and previous schools. The purpose of such questioning was to find out how they learned of their teachers' sexual orientation; what they did when they did discover it; and what effect, if any, the disclosure had on school stability.

1. Mode of Detection

Three questions attempted to measure the principals' mode of learning of the sexual orientation of their employees. In light of the fact that a significant minority of principals favor the revocation of the licenses of gay teachers solely because of their sexual orientation, one would want to know how they learn that a teacher is gay. Is there also a chance that *nongay* teachers are threatened by the danger of misidentification?

Table 5 reports the principals' estimate of the percentage of teachers on their current staff whom they know or have "reason to believe" are homosexuals. The results are interesting in that two-thirds of the principals believe they have staffs entirely devoid of gay teachers. Only 3% believe that more than 5% of their instructors are homosexual. In light of the generally accepted belief that about 10% of the general

49. *McCall's*, too, reported such a dichotomy, albeit a less dramatic one. Whereas 42% of all principals favored status dismissals, only 36% of experienced principals favored such dismissals. *McCALLS*, *supra* note 5, at 162.

population is probably homosexual,⁵⁰ these estimates seem low. Unless gay people are avoiding the profession, they appear to be fairly successful in hiding their status.

Table 5 Sexual Orientation of Current Staff

"What percentage of teachers at your school do you know, or reasonably believe, to be homosexual?"

None	65%
1-5%	32%
6-10%	3%
11-25%	0%
Above 25%	0%

Nonetheless, 44% of the principals claim that at their present or past schools, they *knew* that they had at least one gay teacher (table 6).

Table 6 Level of Experience with Gay Teachers

"As a principal at this, or any other school, have you *known* one of your teachers to be homosexual?"

Yes	44%
No	56%

Yet, how did they "know"? Table 7 suggests some potentially disturbing answers. The respondents were invited to explain how they learned of the sexual orientation of each teacher whom they "knew" to be gay. Sixty-nine cases were identified by the principals.

50. Nobody knows, of course, the extent to which homosexuality actually exists. Partly, this is due to the stigma (and consequent secretiveness) attached to the act and the actor. Partly, too, it is a function of the difficulty in ascertaining what makes a person "homosexual." Is a person homosexual because that person has committed a single homosexual act in his or her life? If so, 37% of the adult males and 13% of the adult females in the population may qualify as "homosexual." A. KINSEY, W. POMEROY & C. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 650 (1948) [hereinafter cited as KINSEY, *SEXUAL MALE*]; A. KINSEY, W. POMEROY, C. MARTIN & P. GEBHARD, *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* 474-75 (1953). To so classify a person as a homosexual would mean that adolescents who experiment, and prisoners who turn to homosexuality as a sexual outlet because of the absence of a heterosexual outlet, would be deemed homosexual. It also would mean that an abstinent person—e.g., a Catholic priest or nun—would not be labeled as either "homosexual" or "heterosexual," regardless of what sexual desires or fantasies may be experienced.

Kinsey decided to resolve this definitional problem by creating a seven-point continuum, on which zero indicated that a person had engaged in no physical contacts, nor experienced sexual desires, of a homosexual nature over two time spans (three-year period, and life-time), and in which six was used to classify exclusively same-sex desires and activities. KINSEY, *SEXUAL MALE*, *supra*, at 636-51. According to this approach, approximately 13% of the male population is predominantly homosexual. *Id.* at 650-51.

Table 7 Means of Ascertainment of Sexual Orientation

"How did you *know* the teacher was homosexual? (Check as many answers as are applicable)"

1. T voluntarily told me	7
2. T told me, when I asked	0
3. T was involved in "gay rights" activities off-campus.	3
4. T was seen by me with other known homosexuals	2
5. I was told by reliable third party	10
6. T acted like a homosexual	2
7. T was arrested for homosexual behavior.	3
8. T made homosexual advances on student	4
9. (combinations of above)	
a. 1+4+6	1
b. 1+5+8	1
c. 1+8	1
d. 2+5	1
e. 2+8	1
f. 2+5+7	1
g. *3+4+6	2
h. *3+5	1
i. *4+5	4
j. *4+5+6	3
k. *4+6	1
l. *5+6	10
m. 5+6+8	2
n. 5+7	3
o. 5+6+7	1
p. 5+8	4
q. 7+8	1

*Cases involving "knowledge" based *solely* on hearsay, or other questionable factors.

In only seven cases (point 1, table 7) did teachers voluntarily inform their principals of their sexual orientation. Nine cases came to the attention of the principals, at least partially, as the result of arrests (points 7 and 9f, n, o, q); 14 cases involved knowledge obtained, at least in part, via "homosexual advances" (points 8 and 9b, c, e, m, p, q). One of the latter cases resulted in arrest (point 9q). Therefore, it can be concluded that knowledge of orientation was obtained in twenty-two, not twenty-three, cases of apparent misconduct. In two other cases, principals learned of orientation through a combination of ways which included admission by the teacher (points 9a and 9d). Thus, assuming that all of the cases of "homosexual advances" were real, rather than homophobic reactions to ambiguous behavior,⁵¹ we may conclude that in the sixty-nine documented cases, principals reliably

51. When a male teacher touches a child, is it a sexual advance? If he hugs the child, is it a sexual advance, or a sign of a caring, nurturing adult? The author used the ambiguous term "homosexual advance" because there did not seem to be a better term to use, short of requiring the respondent to specify the conduct.
Published by eCommons, 1984

learned of sexual orientation⁵² in only thirty-one cases.

On the other hand, principals "knew" of thirty-eight "homosexuals" based on one or more highly questionable factors. Three teachers were considered homosexual simply because of those teachers' political activism in the area (point 3); two were identified merely because of association with other "known" homosexuals (point 4). Thus, in the latter case, the orientation is subject to double doubt. Two cases involved teachers who simply "acted like homosexuals" (point 6). In ten cases, the principals were satisfied merely on the claims of "reliable" third parties (point 5).⁵³ In twenty-one cases, combinations of these questionable techniques, without the inclusion of any reliable features, were used.

To the extent, then, that principals have acted unreliably, there is a serious chance that, just as many gay teachers are able to pass through unmolested, many teachers, homosexual and heterosexual alike, may be subjected to discipline or less onerous stigma.

2. Repercussions of Detection

Once one turns from the mode of "detection" to the outcome of the disclosure, one learns that the most common response of principals to their "knowledge" is no response at all (table 8). In only 18% of the cases did any formal discipline result from the disclosure.⁵⁴

Table 8 Principals' Responses to "Known" Homosexuals

"When you learned, what did you do?"

Nothing	54%
Warned Teacher	22%
Initiated or cooperated in disciplinary action	18%
[Not classifiable]	6%

This comparatively lenient response, however, is next to meaningless without checking to see whether there was any correlation between the principals' responses and the mode of detection. The results (table 9) are revealing.

52. I assume that the presence of a homosexual act implies that the teacher is homosexual. This need not be so. See *supra* notes 8 & 50 and accompanying text.

53. It is possible that the "reliable third party" was a child claiming a homosexual advance. If this were the case, however, the respondent should have included the latter basis in his or her answer, which would render the case reliable, at least assuming that the homosexual advance occurred, and further assuming that it was intended as a homosexual move by the teacher. This may not be so. See *supra* note 51 and accompanying text.

54. Some cases did not neatly fall into any classification. For example, in a few cases the respondent indicated that he or she surreptitiously observed the teacher for an extended period of time.

Table 9 Responses by Basis of Information

	Voluntary Disclosure	Sexual Advance*	Arrest*	Questionable Factors
Nothing	6	2	2	30
Warning	1	5**	4**	3
Discipline	0	5	3	4
Nonrenewal of contract	0	1	0	0
Involuntary transfer	0	1	0	0
Other	0	0	0	1

*One case involved arrest and sexual advance, and is included in both categories.

**One teacher, after warning, resigned.

Two conflicting messages arise. First, persons perceived to be gay teachers *are* generally treated more leniently than the appellate cases,⁵⁵ or even the principals' hypothetical views,⁵⁶ might suggest. Second, however, not only does there remain a serious risk of discipline to teachers accused of misconduct, but there is a small but significant risk to persons about whom "knowledge" of homosexual orientation comes only as the result of rumor and other potentially nonreliable factors.

At one end of the spectrum, simple voluntary admissions of homosexual orientation resulted in nothing more severe than a warning in one case. As would be expected, however, cases involving claims of "homosexual advances" and arrests were treated more vigorously. Yet even here, discipline did not invariably result. Remarkably, claims of misconduct or arrest resulted in disciplinary action in only eight of the twenty-two (or 36%) cases. Even if school transfers and nonrenewal of contracts are included in the category of discipline, still fewer than half of the cases resulted in any apparently negative result. Warnings were as common a response to claims of sexual advances upon students as was formal discipline. With arrests, a warning was the most common administrative response. This represents a rather muted reaction, especially when compared to the hypothetical views of the same principals.

When a principal "learned" of a teacher's homosexuality by questionable factors, the most common response (79% of the time) was for the principal to do nothing. What is remarkable, perhaps, is the fact that in four cases—11% of the category—disciplinary action was brought. Each case was based *solely* on a claim of a "reliable third party."⁵⁷ In one case, the respondent wrote an apologetic explanation, indicating that the incident "happened 24 years ago . . . and he was a

55. See *supra* notes 11–20 and accompanying text. For a fuller exposition, see Dressler, *supra* note 5, at 417–34.

56. See *supra* notes 34–49 and accompanying text.

57. The third party might have been a child who accused the teacher of impropriety. *But see supra* note 53.

poor teacher anyway." Whatever the explanation for these cases, it raises the specter of punishment for both gay teachers "in the closet," about whom there is no claim of misconduct, and teachers who are heterosexual, but who are the subject of whispering campaigns regarding their sexual orientation.

However, as table 10 indicates, "disciplinary action," regardless of the triggering factor, need not always result in loss of job by the teacher. In only two of the twelve disciplinary cases was this the result; in two-thirds of the cases, the teacher was allowed to retain his or her job at the original school. Thus, looking at the larger picture, of sixty-nine "gay teachers cases" involving twelve disciplinary actions, only two such teachers (or fewer than 3% of all cases) lost their jobs.

Table 10 Results of Discipline (T=12)

T retained	8
T resigned	1
T transferred	1
T lost job	2

What explains the differential treatment of teachers who are similarly situated? The questionnaires do not provide the answer. Obviously, different views held on the issue of homosexuality by principals and other administrators, different responses by the parents and community, the severity of the claim, and the weight of evidence regarding misconduct (when relevant), are among the factors which may affect the remedies chosen. Nonetheless, the comment by the one principal—"he was a poor teacher anyway"—raises another possible factor. Perhaps principals are more apt to look the other way when gifted teachers are implicated. In order to test for this, respondents were asked what grade they gave, or would have given, the gay teacher prior to learning of the teacher's sexual orientation.

Table 11 Grades for Teaching Skill

"Prior to learning of the teacher's homosexuality, how did (or would) you evaluate the quality of the teacher's teaching skills?"

Grade of "A"	39%
"B"	29%
"C"	19%
"D"	10%
"F"	3%

Table 12 Grades of Teachers in Disciplinary Cases (T=12)

Grade of "A"	(8%)	
"B"	(25%)	[reliable third party]
"C"	(25%)	[reliable third party]
"D"	(33%)	[(2) reliable third party]
"E"	(8%)	[homosexual advance]

Table 13 Grades of Teachers in Misconduct Cases Where No Discipline (T=12)

Grade of "A"	33%
"B"	50%
"C"	17%
"D"-"F"	0%

Most "gay teachers" received rather high grades generally (table 11), but *much lower grades* in cases in which disciplinary action was taken (table 12). The more interesting comparison, however, is between tables 12 and 13. Whereas the grades of teachers disciplined (primarily misconduct cases) were rather low (table 12), the grades of teachers accused of misconduct (sexual advances or arrest) who were *not* disciplined (table 13) were remarkably high, even higher, perhaps, than among gay teachers generally. Although the sizes of the groups are small, rendering any conclusion tentative, these figures suggest the intriguing possibility that when principals are required to deal with real rather than hypothetical cases, not only are their responses generally less stringent, but the teacher with a better teaching record is apt to be handled more leniently than the less qualified one.

3. Effect of Disclosure on School Affairs

Finally, there is the question of the extent to which retention of teachers accused of homosexuality affects school activities. In appellate cases, courts were willing to uphold dismissals on claims that retention of the teacher did, or would, cause teaching disruption.⁵⁸ Does retention of a homosexual teacher in fact result in teaching difficulties? Table 14 indicates that in almost three-quarters of the reported cases no negative effects were recorded, and in precisely two-thirds of the minority of cases in which problems did occur, those problems subsided in a short time (table 15). The implication from this is clear. School administrators and courts should be skeptical of calls for dismissal or school transfer based on the claim that retention of the teacher will cause disruption, thereby rendering the teacher unfit. Generally, a patient administrator can retain both the gay teacher and the school's stability.

Table 14 Short Term Effects of Retention

"If the homosexual teacher was retained, whether with or without discipline, were there negative effects in the retention, where there was public knowledge of the teacher's orientation?"

None	71%
Yes, poorer student discipline	8%
Yes, parental antagonism	12%
Yes, both	9%

58. *E.g.*, *Gaylord v. Tacoma School Dist. No. 10*, 88 Wash. 2d 286, 297-99, 559 P.2d 1340, 1346-47, *cert. denied*, 434 U.S. 879 (1977).
Published by eCommons, 1984

Table 15 Longer-Term Effect of Retention

"Where problems existed, did they subside in a relatively short time?"

Yes	67%
No	33%

IV. CONCLUSION

Until now, this much was evident: Gay teachers were a disesteemed minority in a sensitive and important profession. Further, most Americans expressed doubt about permitting their children to be taught by homosexuals. Finally, the courts, while technically rejecting discharge on status alone, have made it comparatively easy for school administrators to fire gay teachers.

What has been less well-known is whether the public's views and the results of the few published appellate cases represent the reality in the school systems. This survey sheds some light on this matter and allows several conclusions to be drawn.

First, a small, but significant, minority of principals—especially principals who have not yet dealt with actual cases—claim that a homosexual teacher should lose his teaching license solely due to status.⁵⁹

Second, principals seem quite concerned about the criminality of homosexuality. The mere label of criminality, even without conviction of any crime, increases support for license revocation. Conviction of a private, adult homosexual act, although practically unlikely, would be the basis for dismissal by well over half of the nation's principals.⁶⁰

Third, a substantial minority of principals favor loss of license in nonsexual conduct circumstances if a teacher either is active in political "gay rights" activities, speaks in the classroom about homosexuality in a nonjudgmental fashion, or discloses his or her sexual orientation to students.⁶¹

Fourth, despite the assertions of principals with regard to hypothetical cases, actual treatment of teachers accused of homosexuality has been much more lenient. "Gay teachers" apparently do not usually lose their jobs. Teachers who voluntarily admit their sexual orientation, and against whom there are no claims of misconduct, are rarely the subject of any administrative discipline. In cases of arrest or sexual advances in the classroom, treatment is predictably tougher. Nonetheless, discipline is not as common a response as is a warning.⁶²

Fifth, principals frequently conclude that a teacher is gay based on

59. See *supra* notes 38–41 and accompanying text.

60. See *supra* text accompanying note 42.

61. See *supra* notes 44–46 and accompanying text.

62. See *supra* text accompanying note 57.

rumor, stereotypical thinking, or guilt by association. Although discipline is rare in such cases, in a significant minority of cases persons thought to be gay were disciplined without claims of misconduct or admissions of homosexuality by the teachers.⁶³

Sixth, teachers with poor teaching records have been far more often subjected to discipline than were those who were perceived to be good teachers, even in cases of apparent misconduct.⁶⁴

Seventh, rarely does retention of a teacher publicly accused of being homosexual cause long-term problems for the administration of school activities.⁶⁵

The implications of these results to lawyers and courts are various. First, decriminalization of private, consensual, homosexual acts collaterally benefits the gay teacher in that it reduces not only the risk of arrest, but makes principals who are skeptical about the retention of "law breaking" teachers apparently more willing to accommodate homosexual teachers. Those who wish to protect gay teachers may be substantially benefited by the decriminalization of sodomy laws.

Second, courts, school officials, and lawyers representing both schools and accused teachers, should take serious note of the findings here that retention of a gay teacher is only infrequently a long-term disruptive factor in the affairs of the school. These results undermine those court opinions that authorize dismissal of teachers based solely or primarily on the grounds of "expert" testimony regarding future disruption. Courts and administrative agencies should be far more demanding in the evidence required to discharge any teacher based on such claims.

Third, for those concerned about sexual abuse of students by teachers, the results are not reassuring. Education statutes which permit discharge based on such misconduct do not necessarily, or even usually, result in occupational discipline.

Finally, although only a minority of principals express opinions favoring dismissal of homosexual teachers solely on the ground of status, and principals' actual conduct is even more restrained, the risks to gay teachers⁶⁶ are not so insignificant that they should be ignored. Statutes which purport to exclude homosexual persons from the public teaching profession are almost certainly unconstitutional, but as long as public sentiment is against them, gay teachers cannot be assured that the courts will protect them to the extent that they are constitutionally

63. See *supra* text accompanying note 57.

64. See *supra* tables 12 & 13.

65. See *supra* tables 14 & 15.

66. To a lesser extent, these risks extend not only to gay teachers, but to those teachers who are not homosexual, but who are rumored to be.

entitled to be protected. Moreover, the survey here did not test for many informal obstacles which may impede gay teachers⁶⁷ such as surveillance, bias in class and other job assignments, poor written evaluations, and unfair treatment in matters of salary or promotion. Only explicit statutory protection of teachers from discrimination based on sexual orientation and rigorous enforcement of such laws can provide freedom from some of these concerns.

⁶⁷. See *supra* note 54.
<https://ecommons.udayton.edu/udlr/vol10/iss3/6>