





1 decision in In Re Bacon would not be given res judicata effect  
2 on respondent's appeal of the judgment of the Berkeley Municipal  
3 Court; it should not be given such effect in the proceedings  
4 before the Hearing Examiner.

5 The question remains, assuming arguendo respondent's  
6 conduct to be unlawful, whether one who is guilty of such  
7 misdemeanors should be denied the opportunity to teach in the  
8 public school system.

9 We know of no prior case in which such misdemeanor  
10 violations have resulted in the denial of a teaching credential.  
11 Furthermore, the evidence does not establish that respondent  
12 would commit such misdemeanors as a teacher. Under cross-  
13 examination, respondent testified that "teachers are in a  
14 different position than students" and that it is "difficult to  
15 imagine" a situation where teachers would "sit in."

16 If the purpose of Miss Bozman's conduct, as the  
17 Opening Memorandum avers, was "to deliberately disrupt the order  
18 and tranquility of an educational institution" (p.5, ll. 16-17),  
19 then arguably such misdemeanors are part of conduct which is  
20 unprofessional. But the evidence which the attorney for the  
21 Committee of Credentials elicited on cross-examination refutes  
22 the allegation contained in the Memorandum. He asked point-blank  
23 if Miss Bozman's purpose at Sproul Hall was to temporarily  
24 disrupt the functioning of the University. Miss Bozman answered,  
25 "No." On direct examination, Miss Bozman testified as to her  
26 reasons for her conduct. Her testimony corroborated the findings  
27 of the Byrne Committee, established by the Regents of the  
28 University of California:

29 "The students involved in the Free Speech  
30 Movement were genuinely and deeply concerned  
31 about off-campus political and social action  
32 and their 'freedom' to use the University  
property as a base for the organization of  
their efforts in this direction. They re-  
sented deeply any action of the campus



1 administration which, in any way, hindered  
2 or interfered with their view of their  
3 constitutional right to engage in what  
they considered to be fundamentally and  
morally required social reform."

4 Respondent's Appearance Before the Credential Committee

5 Paragraph IX charges that when respondent appeared  
6 before the Committee of Credentials, she "failed or refused to  
7 confirm that she will not use illegal methods or engage in  
8 intentional violations of the law in order to support what the  
9 respondent may feel is a just or desirable cause."

10 Mr. George Horton, who testified on behalf of the  
11 Committee, admitted on cross-examination that he could not  
12 recall any question directed to the allegation contained in  
13 Paragraph IX. Miss Bozman testified that she could not so  
14 remember. Thus, there is no evidence that Miss Bozman  
15 represented to the Committee of Credentials any beliefs  
16 concerning civil disobedience.

17 Respondent's Present State of Mind

18 The Opening Memorandum attempts to justify the charges  
19 that respondent lacks good moral character and is unfit for  
20 service in the public schools on the following grounds:

21 (1) The fact that respondent signed the loyalty  
22 oath required of applicants for a teaching credential and the  
23 assertion that respondent's state of mind is contrary to the  
24 terms of the oath;

25 (2) The fact that respondent rejected the terms of  
26 probation set by the Berkeley Municipal Court; and

27 (3) Respondent's testimony that she cannot absolutely  
28 guarantee that she will never again engage in illegal conduct.

29 The Loyalty Oath

30 Respondent testified that she believed her conduct to  
31 be consistent with her oath to support the Constitution and to  
32 be a law-abiding citizen. She believed her protest necessary



1 to support rights guaranteed by the Constitution. She did not  
2 believe her conduct to be illegal. The evidence does not  
3 indicate the contrary is true. Miss Bozman plead "Not Guilty"  
4 to the charges against her.

5 The Opening Memorandum apparently concedes that one  
6 does not violate the oath if one commits a law violation, but  
7 then states that Miss Bozman's remark to this effect "is one of  
8 many indications of a negative attitude toward her obligations  
9 to society." (p.4, ll. 7-10). Certainly respondent should not  
10 be penalized because of her concededly truthful answer to the  
11 charge that she practiced fraud in her credential application.  
12 Nor should she be penalized because the Opening Memorandum  
13 characterizes her "social attitudes" as "negative." Such a  
14 vague and peculiar charge is more appropriate to a Kafka novel  
15 than to a legal proceeding in California. That the Opening  
16 Memorandum makes this accusation indicates the vaporous nature  
17 of the charges against Miss Bozman.

#### 18 Terms of Probation

19 Respondent testified that she refused probation  
20 because she was not certain exactly what activities the terms of  
21 probation proscribed and because she feared the effect the terms  
22 might have on those students who are active in the civil rights  
23 movement. It is not surprising that respondent is uncertain as  
24 to what constitutes an unlawful group trespass, a group  
25 disturbance of the peace or an unlawful sit-in. In these days  
26 of great social change, the Justices of the United States  
27 Supreme Court often dispute bitterly among themselves as to  
28 whether or not a civil rights demonstration is constitutionally  
29 protected. See, e.g., Brown v. State of Louisiana, 86 S.C. 719  
30 (decided February 23, 1966).

31 Respondent, according to my notes of her cross-  
32 examination, did not categorically state that she would engage



1 in unlawful acts if it involved a civil rights issue (contra,  
2 Opening Memorandum, p.4, ll. 24-25). Respondent testified that  
3 she did not know whether or not she would engage in an illegal  
4 act in the future but that she recognized that on an extraordinary  
5 occasion, a conflict between law and morality can occur. Such  
6 a statement affords no basis to deny respondent entrance into  
7 her chosen profession.

#### 8 The Guarantee Sought

9 In those extreme situations, where morality and law  
10 conflict, respondent testified that she believes civil  
11 disobedience to be morally proper. Perhaps, to the Committee  
12 of Credentials, this is another "indication" of respondent's  
13 "negative attitude toward her obligations to society." If so,  
14 we wonder how the Opening Memorandum would characterize the  
15 social attitudes of Thomas Jefferson, George Washington,  
16 William Lloyd Garrison, Eugene Debbs and Martin Luther King.

17 The Committee of Credentials is attempting to  
18 condition the granting of Miss Bozman's credential upon her  
19 "guarantee" that she will never again commit an illegal act.  
20 Such a guarantee is alien to our democratic beliefs and  
21 resembles the actions of the totalitarian regimes we oppose.  
22 It runs against the long and painful history in Great Britain  
23 and the United States which eventually led to the high place  
24 our modern society accords to individual conscience. That  
25 Miss Bozman could not give such a guarantee at the hearing is  
26 an indication of her honesty and integrity. Such a guarantee  
27 requires Miss Bozman to permit the State to become the guardian  
28 of her conscience. Even children in Sunday School learn that  
29 the one authority to which we owe absolute obedience is God, not  
30 the State.

31 Miss Bozman, however, is no champion of the cause of  
32 civil disobedience. In response to the hypothetical questions



1 posed by the attorney for the Committee of Credentials, Miss  
2 Bozman showed that she possessed mature judgment. She continually  
3 emphasized the necessity for exploring all available channels  
4 in attempting to reconcile conflict. Although she could not  
5 categorically state that under extreme situations she would not  
6 engage in conduct which might be held to be illegal, she  
7 testified that she found it difficult to imagine teachers ✓  
8 "sitting in" or engaging in similar illegal conduct.

9 Evidence of Good Moral Character

10 At the hearing both Mrs. Nichols and Mrs. Johntz  
11 testified on behalf of Miss Bozman. Mrs. Nichols testified  
12 that Miss Bozman had volunteered one night a week for six months  
13 in order to tutor potential school dropouts in slum areas. Mrs.  
14 Johntz testified that Miss Bozman volunteered for a special  
15 project involving a difficult assignment in a ghetto school.  
16 Mrs. Johntz recalled Miss Bozman's genuine concern" and  
17 "commitment" with the problems of culturally-deprived children  
18 and her "perceptive" quality in relating to such children. We  
19 doubt if even the Opening Memorandum would characterize Miss  
20 Bozman's conduct in this regard as indicating "a negative  
21 attitude toward her obligations to society."

22 We submit that such evidence of Miss Bozman's willing-  
23 ness to undertake voluntarily such difficult assignments is far  
24 better evidence of her good moral character as a teacher than  
25 philosophical speculations on civil disobedience and contentious  
26 speculations based upon far-fetched hypothetical situations.

27 Conclusion

28 Respondent's application for a General Secondary  
29 Credential should be granted.

30 Dated: April 19, 1966.

31 JOHNSTON & PLATT  
32 AMERICAN CIVIL LIBERTIES UNION  
OF NORTHERN CALIFORNIA  
MARSHALL W. KRAUSE

By /s/ Neil F. Horton  
Attorneys for Respondent