

Original sponsors: Brown and Rogers

Offered: 6/15/81
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 36 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege not to disclose
7 information or sources of information; and providing
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 09.25.150 is repealed and reenacted to read:

11 Sec. 09.25.150. CLAIMING OF PRIVILEGE BY PUBLIC OFFICIAL OR RE-
12 PORTER. Except as provided in AS 09.25.160 - 09.25.220,

13 (1) a public official may not be compelled to disclose the
14 source of information obtained while performing duties as a public
15 official;

16 (2) a reporter may not be compelled to disclose the source
17 of information obtained while acting as a reporter or to produce notes
18 prepared by him while acting as a reporter; and

19 (3) a reporter, as a witness at a trial or hearing, may not
20 be required to produce photographs, photographic negatives, audio or
21 video tapes, or any other documents prepared or obtained by him while
22 acting as a reporter.

23 * Sec. 2. AS 09.25.160(a) is amended to read:

24 (a) When a public official or reporter claims a [THE] privilege
25 set out in AS 09.25.150 in a cause being heard before the supreme court
26 or a superior court of this state, a person who has the right to ques-
27 tion the public official or reporter [HIM] in that proceeding, or the
28 court on its own motion, may challenge the claim of privilege. The
29 court shall make or cause to be made whatever inquiry the court thinks

1 necessary to a determination of the issue. The inquiry may be made
2 immediately [INSTANTER] by way of questions put to the witness claiming
3 the privilege and a decision then rendered, or the court may require
4 the presence of other witnesses or documentary showing or may order a
5 special hearing for the determination of the issue of privilege.

6 * Sec. 3. AS 09.25.160(b) is amended to read:

7 (b) The court may deny the privilege granted in AS 09.25.150(1)
8 and (2) and may order the public official or the reporter to testify, or
9 may order a reporter to produce notes prepared by the reporter, imposing
10 whatever limits upon the testimony and upon the right of cross-examina-
11 tion of the witness as may be in the public interest or in the interest
12 of a fair trial or a fair hearing, if it finds the withholding of the
13 testimony would

14 [(1)] result in a miscarriage of justice or the denial of a
15 fair trial or a fair hearing to those who challenge the privilege [; OR

16 (2) BE CONTRARY TO THE PUBLIC INTEREST].

17 * Sec. 4. AS 09.25.160 is amended by adding a new subsection to read:

18 (c) The court may deny the privilege granted by AS 09.25.150(3)
19 and may order a reporter to produce photographs, photographic negatives,
20 audio or video tapes, or any other documents prepared or obtained by
21 him while acting as a reporter, imposing whatever limits upon the use
22 of the items produced and upon the right of examination and cross-
23 examination of the reporter as may be in the public interest or in the
24 interest of a fair trial or a fair hearing, if the court finds that

25 (1) the items that it orders the reporter to produce are

26 (A) designed for use or have been used in committing a
27 crime; or

28 (B) the fruits of a crime; or

29 (2) withholding of the items would

1 (A) result in a miscarriage of justice or the denial of
2 a fair trial or a fair hearing to those who challenge the privi-
3 lege; or

4 (B) be contrary to the public interest.

5 * Sec. 5. AS 09.25.170(b) is amended to read:

6 (b) If, in a hearing, a public official or a reporter should re-
7 fuse to divulge the source of [HIS] information, or if a reporter
8 called as a witness in a hearing should refuse to produce photographs,
9 photographic negatives, audio or video tapes, notes, or any other docu-
10 ments prepared or obtained while acting as a reporter, the agency,
11 [BODY,] person, official, or party seeking the information may apply to
12 the superior court for an order divesting the official or reporter of
13 the privilege. When the issue is raised before the supreme or a
14 superior court, the application must be made to that court.

15 * Sec. 6. AS 09.25.170(c) is amended to read:

16 (c) Application for an order shall be made by verified petition
17 setting out the reasons why the disclosure is essential to the adminis-
18 tration of justice, or why the disclosure is essential to a fair trial
19 in the instant proceeding, or the protection of the public interest.
20 Upon application, the court shall determine the notice to be given to
21 the public official or reporter and fix the time and place of hearing.
22 The court shall make or cause to be made whatever inquiry the court
23 thinks necessary, and make a determination of the issue as provided in
24 AS 09.25.160.

25 * Sec. 7. AS 09.25.190 is amended to read:

26 Sec. 09.25.190. EXTENT OF PRIVILEGE. When a public official or
27 reporter claims the privilege conferred by AS 09.25.150 - 09.25.220,
28 and the public official or reporter has not been divested of the pri-
29 vilege by order of the supreme or superior court, the public official,

1 the reporter or [NEITHER HE NOR] the news organization with which
2 the reporter [HE] was associated may not thereafter be permitted to
3 plead or prove the sources of information withheld, and a reporter
4 called as a witness may not be required to produce photographs, photo-
5 graphic negatives, audio or video tapes, notes, or other documents
6 prepared or obtained while acting as a reporter, unless the informant
7 consents in writing or in open court.

8 * Sec. 8. AS 09.25.220(3) is amended to read:

9 (3) "reporter" means a person regularly engaged in the
10 business of collecting or writing news for publication, or presentation
11 to the public, through a news organization; the term [IT] includes

12 (A) persons who were reporters at the time of the
13 communication, though not at the time of the claim of privilege;

14 (B) a photographer or technician who handles cameras
15 and photographic or audio equipment; and

16 (C) an editor or publisher associated with or employed
17 by a news organization;

18 * Sec. 9. AS 09.25.220(4)(A)(ii) is amended to read:

19 (ii) providing newsreels, audio or video tapes, or
20 other motion picture news for public showing; or

21 * Sec. 10. AS 09.25.220(1) is repealed.

22 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).