HB

36

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 27, 1981

SUBJECT: Application of Rule 38(e) to CSHB 36 (Judiciary)

TO: Representative Donald E. Clocksin
Vice Chairman
House Judiciary Committee

FROM: John B. Chenoweth
Legislative Counsel

The responsibility for adopting and revising rules for the state's courts is committed by the state constitution to the Alaska Supreme Court:

> RULE-MAKING POWER. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. . . .

Article IV, section 15. The rules adopted by the Supreme Court may be altered by the legislature "by two-thirds vote of the members elected to each house." Article IV, section 15.

The constitutional requirement, as it affects the legislature's review and adoption of legislation, is incorporated as part of the Uniform Rules of the Legislature. By Rule 38(e)

> If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the membership to which the house

> is entitled. If the section effecting a change in the court rule fails to receive the required two-thirds vote the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

HB 36 and CSHB 36 (Judiciary) revise and extend the conditional privilege relating to giving of testimony and delivery of evidence by reporters and others generally engaged in the work of the press.

You have asked whether amendments contained in CSHB 36 (Judiciary) are subject to the provisions of Rule 38(e) with respect to both the two-thirds vote and the title requirements.

In my opinion, 1/ the requirements of Uniform Rule 38(e) apply to the committee substitute. I have redrafted the committee substitute as presented by the House Judiciary Committee to conform to the conclusion expressed in this memorandum.

1/ There is no unanimity in this division as to whether my conclusion is correct. Two of the four people that I asked to review this opinion in draft said they believed that I was correct, one said that he would have probably come out the other way (i.e., Rule 501 permits the legislature to add one or more privileges without separate notice and a two-thirds vote) and the fourth, disagreeing with all that has been said, suggests that the definition of privileges is "substantive" and wholly within the authority of the legislature to determine by law.

Additional research was undertaken by an extern assigned to assist in the work of this division. Her memorandum turned up little acse law, but evidence of the debate on the privileges not to testify or present evidence are procedural or substantive:

> "In an article by Alfred Clapp, "The Privilege Against Self-Incrimination", 10 Rutgers L.R., 541, substantive

*

Under authority of the constitutional provision earlier cited, the Alaska Supreme Court, by Order No. 364, effective August 1, 1979, adopted Rules of Evidence applicable "in all proceedings of the courts of the State of Alaska". The material collected in Rules 501 - 512 of the Rules of Evidence establishes certain privileges not to testify or produce evidence, defines the extent of the privileges established (whether by law or by rule), and otherwise describes the relationship between the privileges created and the conduct of discovery or trial. Rule 501 recognizes that the privileges which are covered by the Rules of Evidence may derive from several sources, including legislative enactment:

> "PRIVILEGES RECOGNIZED ONLY AS PROVIDED. Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

1/ con't.

law was described as "defining the rights and duties which give rise to a cause of action or to a defense to an action". Procedural law was described as "adjectival", "it provides the litigant with the means or methods by which these rights, duties, and defenses are enforced through the courts." He concluded that rules of evidence are part of the "adjectival machinery" because they are "but regulations fixing appropriate methods . . . for the ascertainment of facts at trial."

> Any right resting on such a regulation -- as, for example, the right of a witness or party to a privilege or the right of a party to exclude hearsay -- palpably does not give rise to a cause of action. It merely operates the machinery of enforcement."

[10 Rutgers L.R. 541]

(1) refuse to be a witness; or

(2) refuse to disclose any matter; or

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing."

In commentary to Rule 501 of the Alaska Rules of Evidence, a distinction between legislatively-drawn privileges and those created by Court Rule is noted:

> This rule codifies the existing law that privileges are not recognized in the absence of statutes or rules specifically providing for them. No attempt is made in these rules to incorporate the constitutional provisions which relate to the admission and exclusion of evidence, whether denominated as privileges or not. Similarly, privileges created by specific statutes generally are not within the scope of these rules. E.g., AS 09.24.150 - 220 (public officials, reporters); AS 24.55.260 (ombudsman).

The distinction is maintained in the commentary to Rule 502:

> "In light of Rule 501, Rule 502 is redundant in its reference to the State of Alaska. Rule 501 establishes that privileges can be created by these rules or by enactments of the Alaska legislature. It is therefore clear that even without Rule 502 any privilege provided for by statute would be recognized. Despite the redundancy, Rule 502 serves two purposes not served by Rule 501 in connection with Alaska law. First, it serves to remind the legislature that these rules will not generally provide a privilege in circumstances where the government is requiring a person, organization, or entity to supply information. If a privilege is to be forthcoming, it must be legislatively created. . . .
>
> * * *
>
> "It should be plain that the existence and scope of required records, laws and privileges are dependent upon legislative action. The legislature can eliminate

> any privilege that would exist under this rule." (Emphasis added)

While both the Rule and its commentary recognize that the legislature may establish privileges relating to admission or exclusion of evidence, the constitution bars the legislature from "making" rules governing practice and procedure in the civil and criminal courts of the state, vesting this power in the Supreme Court. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (1969):

> Respondents also contend that AS 22.20.022 [relating to the disqualification of a trial judge] is invalid as violating the rule-making power of this court. The Alaska Constitution vests in the supreme court the authority to "make and promulgate rules governing practice and procedure in civil and criminal cases in all courts." The legislature has no power to make rules, but only to change them by two-thirds vote [citing Article IV, section 15, Alaska Constitution]. The question here is whether the disqualification statute constitutes a rule governing practice and procedure in the courts which the legislature had no constitutional authority to make. The answer to that question depends on whether the subject matter of the statute is substantive or procedural. If it is substantive in nature it is a matter within legislative prerogative; if it is procedural, it falls within the ambit of this court's rule-making power. (Emphasis added)

451 P.2d 570, 575 - 576. See also Thomas v. State, 566 P.2d 630 (1977).

Since it is certain from these earlier decisions that the legislature cannot "make" new rules without violating Article IV, section 15, an act of the legislature which adds or extends a privilege, as authorized by the Rules of Evidence, cannot be an "addition" to those rules.

Whether characterized as a rule "created" by law or as an amendment to the privileges recognized by the Rules of Evidence, that which the legislature does by law to add to the number of circumstances in which a privilege against

giving testimony or providing evidence shall be recognized may, as a matter of constitutional law, only be characterized as an amendment or change 2/ of a rule of court relating to civil or criminal practice or procedure, requiring concurrence of two-thirds of the membership of each house. 3/

JBC:ljb

Enclosure

2/ See also Leege v. Martin, 379 P.2d 447 (1963):

> Appellees [challenging a statute recognizing forfeiture of a commercial fishing license] contend that in this situation, when there is no specific rule in a particular procedural area, the legislature has no authority to act; since its constitutional power to change "These rules" is limited to promulgated, existent rules upon which a change may be wrought. On the other hand, the state argues that the rules promulgated by this court must be considered in their totality; that it is the body of those rules as an entity which the legislature is empowered to change; that an addition to the body of rules is no less a "change", within the meaning of the constitution, than a deletion or amendment of a specific, existing rule; and that the legislature therefore does have the power to enact a procedural statute in an area not covered specifically by a rule of this court.

379 P.2d 447, 449.

3/ Without regard to the requirements of the two-thirds vote and separate notice in the bill title, the legislature may act, of course, on matters of substance (as distinguished from procedural concerns wherein the legisalture's power to act is limited). Channel Flying, Inc. v. Bernhardt, 451 P.2d 570, 575 (1969); Thomas v. State, 566 P.2d 630, 637 (1977). There is substantial literature examining without resolving

the question of whether rules of evidence are procedural or substantive. See, for example, "The Coordination of Legislative Bill drafting and Statutory Revision with Judicial Rule-Making in Alaska", Legislative Affairs Agency staff memoranda (July 1, 1960):

> "[T]here is general agreement that most rules of evidence are matters of procedure. Most agree, however, that the rule of evidence should be treated as a unit and be considered as being totally substantive or procedural. Levin and Amsterdam propose that all rules of evidence be the primary responsibility of the court with the opportunity for change by legislative review. This, of course, is the clear advantage of the provision in the Alaska constitution over those of New Jersey and Michigan. Permitting rules of evidence to be considered as procedural in Alaska only permits the court initially to promulgate the rules which are always subject to review by the legislature and change by a two-thirds vote. In the most comprehensive review of the problem if the court's power to promulgate rules of evidence, the Institute of Judicial Administration indicates that in several states which have court rule-making power similar to Alaska, evidentiary rules have been made. . . . [T]he federal courts and at least 12 state courts have promulgated certain rules of evidence on the basis of their power to make rules of court practice and procedure. It would seem that the arguments that were made at the Alaska Constitutional Convention for placing the rule-making power in the court applies to rules of evidence also. The courts are immediately concerned and familiar with the subject matter and could maintain a close and constant watch over the rules of evidence. The courts should have the initial responsibility for delays and injustices in the processing of litigation, which is composed in part of the presentation of evidence. It is therefore suggested that rules of evidence be considered matters of procedure with the initial responsibility in the court subject to legislative change."

Staff memorandum, July 1, 1960, p. 39 - 41.

Historically, the legislative process regarded additions or extensions of privilege occurring before August, 1979, as

amendments to the Code of Civil Procedure, requiring approval by two-thirds vote of the members of each house. See sec. 3, Chapter 32, SLA 1975 (adding the privilege of the ombudsman not to testify).

In promulgating the new Rule 501 of the Rules of Evidence, there is no reason to believe that the Court "changed its mind" and decided that the constitutional provision giving the Supreme Court the authority to "promulgate" rules and the legislature the power to "change" them with a two-thirds vote should be undermined by a reference in Rule 501 to privileges created by enactments of the Alaska Legislature. Certainly, as had been the practice in the past, the Court recognized that the legislature could make changes in the body of the rules by enacting legislation in accordance with the constitutional provision and Rule 38(e) of the Uniform Rules of the Legislature.

The additional commentary provided by Professor Saltzburg is not dispositive:

> "When I drafted and the Advisory Committee approved Rule 501 and the Commentary, I believe that we all had in mind avoiding conflicts between the legislature and the courts. One obvious way of doing this was to incorporate statutory privileges into Rule 501, which we did. And the first sentence of the Commentary accompanying Rule 501 makes clear, I think, that we foresaw that the legislature might enact new privilege statutes.
>
> "No one can say with assurance that privileges are more substantive or more procedural. To the extent that they affect out of court behavior they are substantive. To the extent that they control the evidence that courts receive they are procedural. I think that the position that we took in the drafting of Rule 501 was a conscious recognition that privileges were sufficiently procedural so that courts could promulgate rules covering them when they wished and sufficiently substantive that the legislature could enact statutes dealing with them when it wished.
>
> "Since privileges can be viewed as sufficiently substantive to be the proper subjects of ordinary

> legislative action, and since we intended to recognize this in Rule 501, I believe that a privilege rule can be enacted or modified by a majority vote of the legislature. . . ." (Emphasis added)

Letter of Stephen A. Saltzburg to Holli Ploog, February 18, 1981.

Mr. Saltzburg's letter merely underscores the opposite points of the debate. His suggestion that evidentiary matters have both procedural and substantive characteristics confirms my view that the addition of a rule not to testify or provide evidence to the general body of privileges is a matter of practice or procedure and that legislative activity on the subject may only be interpreted as an alteration requiring a two-thirds vote.

As a matter of legislative drafting, debate may now be foreclosed by the Manual of Legislative Drafting. The authority of the Manual derives from the constitution and from a uniform rule of the legislature. By Article II, section 14 of the constitution, "[t]he legislature shall establish the procedure for enactment of bills into law". The legislature has specified that the procedure for handling bills during their consideration by the legislature shall be as set out in AS 24.30 and the uniform rules. AS 24.30.010. Rule 10 directs that the legislative drafting manual prepared and adopted by the Legislative Council "is to be followed in the preparation . . . of all legislative documents and records". The manual itself suggests that matters of "evidence" relate to a rule of practice and procedure, citing the 1960 staff memorandum:

> The basic problem facing the draftsman is whether a matter to be included in a bill is a matter of "administration" or "practice and procedure" or a matter of substance. Rules of practice and procedure are usually considered to include such matters as forms of action, how an action is commenced, the manner of notice, pleading and motion practice, joinder of causes, parties, pre-trial practice and discovery, calendars, the conduct of the trial, stay of proceedings, the procedures by which a judgment is enforced, post-trial proceedings such as motions for new trial, the assessment of costs, the time of appeal, venue, evidence, and procedure involved in special

> proceedings such as adoption and probate. The limitation of actions, burden of proof, presumption, creation of courts, and matters of jurisdiction are, on the other hand, considered matters of substance. (Emphasis added)

1981 Legislative Drafting Manual, p. 20.

(3) "reporter" means a person regularly engaged in the business of collecting or writing news for publication, or presentation to the public, through a news organization; it includes persons who were reporters at the time of the communication, though not at the time of the claim of privilege;

(4) "news organization" means

(A) an individual, partnership, corporation or other association regularly engaged in the business of

(i) publishing a newspaper or other periodical which reports news events, is issued at regular intervals and has a general circulation;

(ii) providing newsreels or other motion picture news for public showing; or

(iii) broadcasting news to the public by wire, radio, television or facsimile,

(B) a press association or other association in individuals, partnerships, corporations, or other associations described in (4)(A)-(i), (ii), or (iii) of this section engaged in gathering news and disseminating it to its members for publication. (§ 1 ch 115 1967)

Editor's note.—Section 2, ch. 115, SLA 1967, provides: "This bill changes Rule 43(h) of the Supreme Court Rules [of Civil Procedure] by adding to the privileges there listed, the conditional privilege for public officers and reporters as to sources of information."

Chapter 30. Judgments.

Article

Article 1. Judgments.

Sec. 09.30.010. Recording copy of judgment as lien. A certified copy of the judgment or decree of a court of this state or a court of record of the United States upon which execution may issue, the enforcement of which has not been stayed, may be recorded with the recorder of a recording district. From the recording, the judgment or decree becomes a lien upon the real property of the defendant which is in the recording district, which is not exempt from execution, and which is owned by him at the time or acquired by him afterward but before the lien expires. The lien con-

UNIVERSITY OF VIRGINIA
CHARLOTTESVILLE-VIRGINIA-22901
SCHOOL OF LAW

February 18, 1981

Ms. Holli Ploog
Staff Counsel
State Capitol
Room 110
Juneau, Alaska 99811

Dear Ms. Ploog:

Pursuant to our telephone conversation of this morning, I am writing to you to indicate my view of the intent of Alaska Rule 501 as it relates to legislative action to establish or modify evidentiary privileges.

When I drafted and the Advisory Committee approved Rule 501 and the Commentary, I believe that we all had in mind avoiding conflicts between the legislature and the courts. One obvious way of doing this was to incorporate statutory privileges into Rule 501, which we did. And the first sentence of the Commentary accompanying Rule 501 makes clear, I think, that we foresaw that the legislature might enact new privilege statutes.

No one can say with assurance that privileges are more substantive or more procedural. To the extent that they affect out of court behavior they are substantive. To the extent that they control the evidence that courts receive they are procedural. I think that the position that we took in the drafting of Rule 501 was a conscious recognition that privileges were sufficiently procedural so that courts could promulgate rules covering them when they wished and sufficiently substantive that the legislature could enact statutes dealing with them when it wished.

Since privileges can be viewed as sufficiently substantive to be the proper subjects of ordinary legislative action, and since we intended to recognize this in Rule 501, I believe that a privilege rule can be enacted or modified by a majority vote of the legislature. With respect to the newsreporter privilege in particular, a statute would not be in conflict with any court rule. Thus, there would be no occasion for anyone to have to decide whether a two-thirds vote of the legislature would be necessary to make its rule stick as against a court rule.

If the Alaska Supreme Court were to adopt its own newsreporter privilege law and if there were a conflict between it and the legislature's rule, the Alaska Supreme Court might conclude that the privilege is more procedural than substantive and thus require a two-thirds vote of the legislature to make its rule stick. Unless and until this situation arises, a majority vote in support of a statute that is not in conflict with a court rule would seem to suffice.

To be extra-safe, you might insert into the statute some preliminary language suggesting that the statute is intended to foster newsgathering and protect the privacy of the editorial process, which are substantive concerns.

I hope that this opinion is of some help to you.

Sincerely,

Stephen A. Saltzburg
Professor of Law

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

DATE: March 11, 1981

TO: The Honorable Jim Duncan, Speaker
House of Representatives

FROM: Rep. Fred Brown, Chairman
House Judiciary Committee

LETTER OF INTENT
CSHB 36 (Judiciary)

The Committee on Judiciary has had under consideration HB 36, "An Act extending the conditional privilege of reporters as to sources of information", and has provided you with a committee report recommending that it be replaced with our committee substitute for that bill, and that committee substitute do pass.

Additionally, we wanted to point out certain matters involving the nature of the privilege addressed by the bill.

The bill addresses the substantive law which defines when a privilege does or does not exist on the part of a journalist or a public official.

The bill does not address the procedure under which that privilege is invoked in the court, except to restate existing law on that subject because of the requirements of good legislative drafting.

This is an important point. During the committee's deliberations, some members of the committee were concerned as to whether there should be a separate section relating to a change in a Rule of Court.

However, in examing Rule 501 of the Rules of Evidence of the State of Alaska, and in consulting with attorneys on the subject, the committee has concluded that the Legislature can rightly stake claim to jurisdiction over all of the substantive law of privilege, even though it does relate to court proceedings.

Professor Stephen A. Saltzburg, Professor of Law at the University of Virginia, who was reporter to our Supreme Court's

Advisory Committee on the rules of evidence, is of the same opinion. In a letter from Mr. Saltzburg to legislative staff, he notes:

> When I drafted and the Advisory Committee approved Rule 501 and the Commentary, I believe that we all had in mind avoiding conflicts between the Legislature and the courts. One obvious way of doing this was to incorporate statutory privileges into Rule 501, which we did. The first sentence of the Commentary accompanying Rule 501 makes clear, I think, that we foresaw that the legislature might enact new privilege statutes.

Rule 501 states in its entirety:

> Except as otherwise provided by the Constitution of the United States or of this State, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:
>
> (1) refuse to be witness; or
> (2) refuse to disclose any matter; or
> (3) refuse to produce any object or writing; or
> (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

The language to which Prof. Saltzburg referred to in the Commentary, states that:

> This rule codifies the existing law that privileges are not recognized in the absence of statutes or rules specifically providing for them. No attempt is made in these rules to incorporate the constitutional provisions which relate to the admission and exclusion of evidence, whether denominated as privileges or not. Similarly, privileges created by specific statutes generally are not within the scope of these rules. [emphasis supplied] E.g., AS 09.25.150-220 (Public officials, reporters); AS 24.55.260 (Ombudsman).

Admittedly, the issue is not an absolutely clearcut one. Staff counsel from the Legislative Affairs Agency's Legal Services Division were evenly divided as to whether a rules change would be required, even in light of Prof. Saltzburg's letter and the commentary language.

However, it appears clear to the members of the committee (which includes laymen and lawyers) that if we specifically acknowledge that we are intentionally legislating in this area, as a matter of substantive law, and are not merely inadvertantly overlooking the question of the rules change, the courts will uphold our action.

To some extent the Legislature is charged as well as is the Judiciary with interpreting the Constitution. In this area we strongly believe that the definition of the privilege, and substantive matters relating to who should have the privilege, are all matters of substantive law which should be reachable by the Legislature without the burden of a two-thirds vote. How the courts procedurally apply the privilege in any particular case is entirely within the parlance of the Supreme Court's rule-making power, as long as the implementatation by the courts give full respect to the privilege as a matter of substance.

Therefore the Judiciary Committee has concluded that no rule change is necessary to adopt the provisions of committee substitute for HB 36.

Respectfully submitted,

Rep. Fred Brown, Chairman
Committee on Judiciary

Letter of Intent REF

HB - 36

House Judiciary

- Letter of Intent

NOT RULES

CHANGE

laska Newspaper Association
c/o Box 710, Fairbanks, AK 99707

February 9, 1981

Rep. Fred Brown, chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, AK 99811

Re: HB36 extension of privilege

Dear Fred:

We support the basic thrust of this legislation as we understand it: to extend the conditional privilege now enjoyed by reporters to still and TV news photographers.

In performance of their duties, news reporters and photographers must move freely throughout a community. This means coming into contact with sources from various economic and social strata including, occasionally, criminals and others on the fringe of society. In a less dramatic vein, it also means coming into contact with otherwise law-abiding citizens who have grievances against established government authorities, or are suspicious of them.

Without the right to claim a privilege of withholding information or raw, unpublished and unbroadcast film, reporters and photographers would run the risk of being used against their will as tools of law enforcement. Reporters and photographers forced into these unwilling roles could face curtailment of their ability to move freely through a community if their sources viewed them as agents of police.

In Section 2, may I suggest a second look at language that permits a judge to deny privilege merely by finding that withholding testimony or evidence would be "contrary to the public interest."

Certainly, it is reasonable to assume a privilege claimed under the First Amendment would be scrutinized critically if it conflicted with the Sixth Amendment's right to a fair trial. However, an assertion of "public interest" in this case seems unnecessarily broad and ill-defined.

Thank you for the opportunity to testify.

Sincerely,

Kent Sturgis

Kent Sturgis
Chairman, legislative committee

Original sponsors: Brown and Rogers

Offered: 3/12/81
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 36 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

Sec. 09.25.150. CLAIMING OF PRIVILEGE BY PUBLIC OFFICIAL OR REPORTER. Except as provided in AS 09.25.160 - 09.25.220,

(1) a public official may not be compelled to disclose the source of information obtained by him while acting in the course of his duties as a public official; and

(2) a reporter may not be compelled to disclose the source of information obtained by him, nor may he be required to produce photographs, photographic negatives, audio or video tapes, notes, or any other documentation, used in the preparation of a news story while acting in the course of his duties

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

(a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question him in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made immediately [INSTANTER] by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may order a special hearing for the determination of the issue of privilege.

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

(b) The court may deny the privilege and may order the public official or the reporter to testify, or may order a reporter to produce photographs, photographic negatives, or audio or video tapes, notes etc. imposing whatever limits upon the testimony and upon the right of cross-examination of the witness as may be in the public interest or in the interest of a fair trial or a fair hearing, if it finds the withholding of the testimony would

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

(2) BE CONTRARY TO THE PUBLIC INTEREST].

* Sec. 4. AS 09.25.170(b) is amended to read:

(b) If, in a hearing, a public official or a reporter should refuse to divulge the source of his information, or a reporter should refuse to produce photographs, photographic negatives, or audio or video tapes, notes etc. the agency, [BODY,] person, official, or party seeking the information may apply to the superior court for an order divesting the official or reporter of the privilege. When the issue is raised before the supreme or a superior court, the application must be made to that court.

Sec. 4 (c) delete [or the protection of the public interest]

Vic, this deletion is done to be consistant w/ the change in Sec. 3

* Sec. 5. AS 09.25.190 is amended to read:

Sec. 09.25.190. EXTENT OF PRIVILEGE. When a public official or reporter claims the privilege conferred by AS 09.25.150 - 09.25.220, and the public official or reporter has not been divested of the privilege by order of the supreme or superior court, the public official, the reporter or [NEITHER HE NOR] the news organization with which he was associated may not thereafter be permitted to plead or prove the sources of information withheld, and a reporter may not be required to produce photographs, photographic negatives, or audio or video tapes, notes etc.

unless the informant consents in writing or in open court.

* Sec. 7. AS 09.25.220(4)(A)(ii) is amended to read:

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

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Sec. 6. AS 09.25.220(3) is amended to read:

"reporter" means a person regularly engaged in the business of collecting or writing news for publication, or presentation to the public, through a news organization, it includes

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

B) photographers and technicians who handle cameras, photographic or audio equipment; and

C) editors and publishers of news organizations.

Jack Lawrence