1696 SJ . SB 423 - SB 485

The Office of the Ombudsman has investigated two complaints involving expenditure of voter approved bond monies. These two complaints point to abuses found in the expenditure of bond funds, and they are brought to your attention in the hope that improvements may be made in the system so that the electorate may know with assurance that when a bond issue is approved, only those projects described in the ballot question are authorized and in the amounts described. A summary of the two complaints is provided below.

Kennicott and Lakina Bridges (Ombudsman Complaint A79-1323)

In 1978, the Legislature adopted and the Governor signed into law, Chapter 138 which provided..."for the issuance of general obligation bonds in the amount of $88,450,000 for the purpose of paying the cost of highway, ferry, airport, local service roads and trail construction, constructing and equipping maintenance facilities, and planning various transportation projects." Money for the construction of the Lakina Bridge and the Kennicott Bridge ($101,800 and $275,000 respectively) was under part 24 of Section 3 of this bill.

Revised Program (RP) 79-242 was signed on June 11, 1979, and it authorized the transfer of $275,000 of the bond funds originally slated for the Kennicott Bridge. The RP stated that the..."bond funds for the Kennicott Bridge project are available for transfer because the state received only funding for the Gastineau Channel Bridge. The Kennicott Bridge (will) be programmed for the special bridge funds in the next capital program." Since the total dollar amount ($275,000) was transferred to the Gastineau Channel Bridge, no funding was available to construct the originally authorized bridge.

On June 26, 1980, RP 80-326 was signed, which transferred $31,800 from the original amount of $101,800 for the Lakina Bridge. The revised program stated that the "Reallocation of $31,800 from the Lakina River Bridge project will provide part of the state match for the On and Off System Bridge Inventory projects." The revised program also said that "Due to pending D-2 legislation, community disagreements, and a reconnaisance project on the route, the Lakina Bridge cannot be constructed at this time."

The remaining balance in the Lakina Bridge project ($70,000) was transferred to "safety programs" through RP 81-18 signed on July 18, 1980. The "safety programs" were funded under Chapter 138, SLA 1978. The RP said that the..."Lakina River Bridge project will be reprogrammed whenever D-2 legislation and community disagreements are settled."

Therefore, in both of these bridge projects, money originally authorized by the voters of Alaska was transferred to other construction projects. The effect of the transfers was to gut the original projects, and fund other projects insufficiently funded.

The Division of Legislative Audit conducted a performance review of construction projects under the control of the Department of Transportation and Public Facilities. The preliminary report prepared by the Division, which was presented to the Legislative Budget and Audit Committee on March 24, 1980, stated in part:

> It is common practice within DOT/PF to transfer authorizations between projects for a variety of reasons, such as expanded project scopes, inadequate initial budgets or overexpenditure of final project budgets. However, according to two Attorney General opinions dated April 26, 1974 and February 29, 1980, transfers of a material portion of project authorizations on many projects funded by General Obligation Bond proceeds cannot be made between projects. This applies regardless of whether the project authorization is considered an appropriation or an allocation. Even if a scheduled project is found to be no longer feasible, that project's authorization cannot be transferred to another project or be used to create a new project.
>
> According to the opinions, neither the Executive Branch nor the Legislature have the authority to materially alter the voter-approved funding proportions of certain bond issues.

The Department of Transportation and Public Facilities disagreed with the report, and felt that transfer of funds is legal, given a recent Attorney General opinion and appropriate executive review and approval. The Office of the Ombudsman found three separate Attorney General opinions discussing the legality of transferring bond funds from the original voter approved projects. The most recent opinion, dated July 23, 1980, states in part:

> There simply exists neither rhyme nor reason to apply the overly broad dicta of judicial rulings from the earlier part of the century to an entirely different situation. It makes sense to list proposed projects. It also makes sense to set out the estimated cost of each (project). To the extent that it is feasible, the act's administrators should have their duties or guidelines prescribed by law. It makes no sense, however, to be frozen to each listed project when subsequent events prove one or another to be underfunded, overfunded, nonexistent, unnecessary, or feasible. It makes sense, therefore, to provide for reallocations between projects within the overall limits of an appropriation. This is what the legislature has done. We think it is legal.
>
> We concede that the practice could be abused to work a fraud on the electorate. Very few practices are, however, free from this defect. Government officials always possess the raw power to abuse the processes entrusted to them and work a fraud on the public. They can be, and generally are, called to account if they do so. But there is no record here of any abuse of power or fraud. So long as reallocations have a rational basis, there will be no fraud on the electorate.

Although transferring bond funds from one voter approved project to another may be technically legal..."the practice could be abused to work a fraud on the electorate." In this case two specific construction projects were authorized by the electorate, and then after these projects were found to be infeasible, the authorized funds were transferred to other projects without voter approval. Whether the public was defrauded or simply misled is largely academic. In either case the practice should be eliminated.

If any practices are free from potential fraud, voter approval of bond propositions should be. The potential exists for projects to be added to a bonding package solely to obtain regional votes. After the total package is approved these projects can then be abandoned; the political objective having been achieved. This potential should also be eliminated.

Television Town Meetings Project (Ombudsman Complaint A79-1012)

The Television Town Meetings Project consisted of three phases: 1) survey research through questionnaires, 2) Television Town Meetings, and 3) a final report including a ten minute film.

Funding for the project flowed from bonds issued pursuant to Chapter 138 SLA 1978. Applicable constitutional and statutory provisions are:

1. AS 24.30.037:

   General obligation bond bills. A bill authorizing the issuance of general obligation bonds creating a state debt for capital improvements shall contain a statement of the scope of each project included in the proposed bond issue. The statement shall include a brief description of each capital improvement project, its location, and, in dollars, that portion of the total bond issue to be allocated to the project.

2. AS 15.15.040(b):

   (b) The lieutenant governor shall prepare and issue or make available with each sample ballot for a special election, the statement provided for in AS 24.30.037 of the scope of each project included in a proposed general obligation bond issue creating a state debt for capital improvements that is submitted to the electorate for ratification under AS 15.15.030(11). The statement of scope for each project shall be the same statement included in the authorization bill. When a ballot proposition is submitted to the voters at a primary or a special election a statement the same as that provided for in the election pamphlet under AS 15.57.010(2) shall be made available with each sample ballot.

3. Article IX, Section 8, Constitution of the State of Alaska:

> Section 8. State Debt. No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

The Legislature approved a bond package to place before the voters that provided for:

Transportation Systems Planning	$4,098,100
Transportation Projects Planning	103,700
Highway Research Program	600,000
TOTAL	$4,801,800

The budget described Transportation Systems Planning as efforts related to the implementation of statewide, regional and local transportation studies and the data, information, mapping and graphics services to support the Transportation studies.

The Ballot Question that went to the voters stated:

> Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $88,450,000 for the purpose of paying the cost of highway, ferry, airport, local service roads and trails construction, constructing and equipping maintenance facilities, and planning various transportation projects? (emphasis added).

The Summary of Proposition for the voters provided:

> This proposal, if approved, would provide for the issuance of general obligation bonds of the State in the amount of $88,450,000 to provide funding for highway, ferry, airport and local service roads and trails construction, for constructing and equipping certain transportation maintenance facilities, and for planning transportation projects. The funds would be allocated as follows:

	PROJECT	LOCATION	AMOUNT
(1)	Planning, project planning and research	Statewide	$4,801,800

There is no specific mention in the Capital Budget Project Justification Statement, the Ballot Question or the Summary of Proposition of the Television Town Meetings. The budget and ballot proposition only mention transportation planning, yet only approximately 50% of the project deals

with transportation specifically. The other 50% deals with non-transportation public facilities or general governmental revenue/taxation spending questions.

In reviewing the testimony and records associated with this project, we feel the following deficiencies and irregularities have occurred:

-- The use of bond monies for the Television Town Meetings was an improper expenditure of bond funds. The ballot question did not mention such a project as required by AS 24.30.037 and AS 15.15.040(b). Indeed, the bond proposal did not even mention public facilities planning for non-transportation projects.

-- Further, the thrust of the entire project was directed toward budgetary priorities rather than the planning of specific capital improvements. The use of bond monies for a project, the direct result of which is an attitude survey rather than a tangible capital improvement, violates the Alaska Constitution, Article IX, Section 8.

Legal arguments aside, we do not believe it is fair to use money for a project the voters could not reasonably have inferred from the ballot question.

Conclusion

In the Television Town Meeting complaint, money was expended on a project that the electorate could not have easily believed would have been included within the language of the bond proposition. In the second complaint investigated by this office, the bond funds were dramatically "reallocated" causing the demise of two bridge construction projects authorized by the electorate.

In both of the complaints, voter approved bond funds were not spent as described in the bond authorization acts, and as stated in the bond propositions on the ballot. The electorate is being misled as to what expenditures are being approved, and to what extent funds may be "reallocated" to other projects. The Florida Supreme Court stated in Oven v. Ausley, 143 So. 588, 589(1932):

> ...it is a violation of an elemental principle in the administration of public funds for those who are charged with the trust of their proper expenditure not to apply such funds to the purpose for which they are raised. When an enforced contribution is exacted from the people by the power of taxation, it is for a specific public purpose, and the fund so raised is a trust fund in the hands of the legal custodians of it.

Solution

The problems identified in these two complaints could be precluded from happening in the future if the following measures are adopted:

1. All general obligation bond acts should be carefully written, with each project described in sufficient detail to inform the electorate. (See AS 24.30.037)

2. AS 24.30.037 should be amended to state that each project has an "appropriation" (rather than "allocation"), and that this appropriation may not be reappropriated to other projects without voter approval.

3. The ballot for all bond propositions should state that the bond funds may not be reappropriated to other projects without voter approval. (See AS 15.15.040)

Submitted this 10th day of February 1981.

Frank Flavin
Ombudsman

APPENDICES

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

ARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

POUCH Z
JUNEAU, ALASKA 99811
(TELEX 45-328)

December 7, 1979

Mr. Frank Flavin, Ombudsman
Office of the Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

Re: Ombudsman Complaint, A79-1012

Dear Mr. Flavin:

Please accept this letter as the response of the Department of Transportation and Public Facilities to your Complaint A79-1012.

1. Not applicable to this Department.

2. We do not plan at this time to reimburse the bond funds on our own initiative. We will, of course, be guided by Bond Counsel and will be responsive to any legislative enactment.

3. If there are any future Television Town Meetings funded by this Department, we will certify the funding source in advance.

4, 5, 6 & 7 are all under review as to this Department's involvement and as to what latitude we have at this date in the implementation of these recommendations.

As to your final two recommendations, we will be happy to work with the Divisions of Personnel and Legislative Audit to assist them in any investigations they are asked to conduct.

Sincerely,

Robert W. Ward
Commissioner

A SPECIAL REVIEW OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES PUBLIC PARTICIPATION PROJECT

February 7, 1980

Commissioner, Department of Transportation and Public Facilities — Robert W. Ward

Deputy Commissioners, Department of Transportation and Public Facilities — Ron B. Lind, John Bates, Patrick P. Ryan, Ray Shumway

STATE OF ALASKA

DIVISION OF LEGISLATIVE AUDIT

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

Feburary 14, 1980

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review:

A SPECIAL REVIEW OF
THE DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
PUBLIC PARTICIPATION PROJECT

January 7, 1980

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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2. Due to delays in the submission and approval of the FY '80 Transportation Planning Annual Work Program, the Department established a special project number in June of 1979 as a temporary account for expenditures. Primarily between the beginning of FY '80 and the time federal approval was obtained on the Annual Work Program (AWP), this one account was used as a cost accumulator for all expenditures incurred on planning projects covered by the AWP, including the Television Town Meeting project. The special account is funded by Chapter 138, SLA 1978 general obligation bond proceeds.

As of December 31, 1979, this temporary account had accumulated over 4,400 transactions totaling in excess of $1,200,000. The Department has attempted to identify and transfer to a separate account, those expenditures relating to the Television Town Meeting project.

During our review, we did not audit the total charges to this temporary account to determine if the Department did in fact identify all Town Meeting costs.

ORGANIZATION AND FUNCTION

At the November 7, 1978 general election, the people of Alaska approved bonding proposition number 5 (Chapter 138, SLA 1978), which provided for the issuance of general obligation bonds in the amount of $88,450,000 for the purpose of paying the cost of highway, ferry, airport, local service roads and trail construction, constructing and equipping maintenance facilities, and planning various transportation projects. Of that total amount, appropriated to the Department of Transportation and Public Facilities, $4,801,800 was allocated to project planning and research, statewide. One project funded by this allocation is the Public Participation Project, commonly referred to as the T.V. Town Meetings.

A reimbursable services agreement between the Department and the Office of the Governor's Alaska Public Forum Office (APF) provided $438,350 of bond funds to develop and implement a program designed to involve Alaska residents in determining the priorities for the construction of capital facilities. APF contracted with Media Group Alaska, Inc. to perform the project task in three phases - survey research, media production (T.V. Town Meetings) and a final report.

The T.V. Town Meetings were intended to provide an alternative to the traditional public hearing process by using television and opinion sampling to obtain the views of the public.

Seven separate programs were produced in Anchorage and were broadcast live, via satellite, respectively to the communities of Juneau, Fairbanks, the Kenai Peninsula, the Matanuska Valley, Anchorage, Sitka and Ketchikan.

AUDITOR'S CONCLUSIONS

1. The validity of the bonds is not impaired.

   All legal counsel involved in our review concur that the expenditure of bond proceeds for the Television Town Meetings is of no concern to the bondholders. The rights of the bondholders are unaffected in that the bonds were validly authorized and are general obligations of the State. The holders rely on the full faith and credit of the State to pay the bonds.

2. The expenditure of Chapter 138, SLA 1978 bond proceeds in relation to certain general topics discussed during the T.V. Town Meetings is apparently legal. However, we question the judgement of the project administrators' inclusion of the general topics in the television programs.

   Legal counsel agree that the Television Town Meeting concept is a valid means of involving the general population in planning capital projects. In addition, considering the non-specific wording of Chapter 138, SLA 1978 and that act's exemption from AS 24.30.037 which requires the inclusion of a statement of the scope of each project, the expenditure of bond proceeds for transportation planning via the T.V. Town Meetings appears proper.

   However, legal opinions conflict in light of the project's inclusion of general topics such as the Permanent Fund, tax relief, d-2, prisons, the capital move, loan programs and residency in the T.V. Town Meetings.

   The Attorney General's Office writes, in part:

   > While one might question whether the program participants may have been over zealous in their attempts to pep up the program--inevitably asking their own favorite questions as a result, we cannot say that the questions asked violated the underlying law or constituted an impropriety. In making that determination we are mindful that hindsight is always 20/20, and that therefore,

> the only reasonable way of judging the matter is to place oneself in the shoes of the program participants at the time they were acting on the matter. One must remember that this was a town meeting--an attempt to replace the traditional hearing with a new media concept. As discussion at traditional public hearings sometimes strays from the basic purpose, so did discussion at this meeting. That occasional deviation does not make traditional public hearings "illegal"--nor did it make the town meeting illegal.

The Legislative Affairs' Division of Legal Services disagrees by stating:

> A major complication arises here because of the injection into the programs of matte which have an extremely tenuous or no relationship to planning capital improvements even in the broadest sense. Substantial portions of the programs were devoted to such matters. Obviously, even in a public hearing, extraneous matter does come up. Here, however, clearly extraneous matter was directly injected into the programs. While such topics as income tax repeal, state loan programs, the permanent fund and d-2 are of public concern, they clearly have no logical and direct connection with constructing capital improvements. Devoting bond proceeds to these kinds of topics is clearly an improper use of the proceeds.

The bond counsel firm of Orrick, Herrington, Rowley and Sutcliffe concludes:

> The non-related questions were in the minority, but there were so many of them that it is difficult to dismiss all of them on the basis of spurring viewer interest. Nevertheless, the programs were still centered around

transportation projects, and, giving the state agencies and officers who expended the funds the benefit of a strong presumption of regularity and allowing them a maximum amount of reasonable discretion, as we believe the courts would do, we conclude that the expenditures in question were not illegal under the Constitution or the statute.

Although legal to the letter of the law, we do not believe the inclusion of the general topics in the program was in good judgement and the relation, if any, of those topics to transportation planning was tenuous at best. In order to ensure the integrity of the State's bonding ability and to maintain public support, we recommend that future general planning be funded through the General Fund and that all bonding legislation be written project specific and in accordance with the provisions of AS 24.30.037.

3. As of December 31, 1979, we estimate that $485,780 of Chapter 138, SLA 1978 bond proceed expenditures were incurred by the Department of Transportation and Public Facilities (DOT/PF) and the Alaska Public Forum.

Due to the scope constraints described on page 4 of this report, financial activity not finalized and poor project accounting by DOT/PF, we were unable to determine the total cost of the Town Meeting project as of December 31, 1979. However, it appears that the majority of the project's financial activity has been completed and most of the Department's costs have been identified. Therefore, the above amount reasonably approximates total bond funds expended. Other project costs charged to General Fund operating accounts are not included since they do not pertain to the purpose of our review.

The bond fund expenditures were made in the following three major areas:

1. Department of Transportation and Public Facilities Costs $ 56,647
(The majority of costs were salaries for the project directors and telephone operators and their related travel.)

2. Alaska Public Forum Costs (These costs include salaries for temporary project employees, related travel, advertisement and other Forum expenses.)	68,883
3. Alaska Public Forum contract with Media Group Alaska, Inc.	360,250
Total Estimated Bond Fund Expenditures	$485,780

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

POUCH Z
JUNEAU, ALASKA 99811
(TELEX 45-328)

March 8, 1980
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LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch WF
Juneau, AK 99811

Dear Mr. Wilkerson:

I have reviewed your preliminary report on "A Special Review of the Department of Transportation and Public Facilities, Public Participation Project, February 7, 1980" and find that I agree with your Auditor's Conclusions, numbers one and three.

I do not agree with your conclusion number two because I feel that the expenditure of the bonds on general topics, as they were included in the T.V. Town Meetings, were clearly legal and that your Auditor's Conclusions should be written to state that they were legal.

In my view, the inclusion of the general topics was desirable and necessary to increase the interest in the programs as well as continue to demonstrate to the public that the use of State funds, for any purpose, decreases the amount available for other uses. Too many times we try to simplify the discussions to the point where they are not realistic when applied to the actual situation.

Sincerely,

Robert W. Ward
Commissioner

1LH

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL
JUNEAU, ALASKA 99811

March 12, 1980

Members of the
Legislative Budget and Audit Committee:

We have reviewed the Department of Transportation and Public Facilities' response to our Preliminary Report. Our comments follow:

Auditor's Conclusion No. 2

The Department disagrees with our conclusion by stating, in part, ". . . that the expenditure of the bonds on general topics, as they were included in the T.V. Town Meetings, were clearly legal and that your Auditor's Conclusions should be written to state that they were legal".

Had the results of our review shown that the expenditures were "clearly legal", we would have reported so. However, considering the conflicting legal opinions obtained during our review, the final decision of the expenditures' legality would have to be made by a court of law.

Therefore, we reaffirm our Auditor's Conclusion No. 2.

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

April 21, 1981

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Room 207 - Capitol Building
Juneau, Alaska

Dear Senator Rodey:

Re: Senate Bill No. 423

Senate Bill No. 423, an Act relating to allocations for projects financed by general obligation bonds, was introduced in the Senate on April 15, 1981 and was referred to the Senate State Affairs; Judiciary and Finance Committees. Subsequently on April 16, 1981, Senator Fischer, Chairman, Senate State Affairs Committee waived referral on Senate Bill No. 423 and the bill was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Anselm Staack, Treasury Comptroller, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

RDS/rdh

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm Staack
Treasury Comptroller
Department of Revenue

04-D2LH

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

SB 423

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SENATE BILL NO. 423
Title Relating to allocations for projects financed by genera' obligation bonds.
Requested by Senate State Affairs Committee Date 4/15/81

II. FISCAL DETAIL
Agency Affected Dept. of Revenue/Div. of Budget & Mgnt./DOTPF/State Bond Committee
Program Category Affected
BRU, Program, or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill would, in effect, require that amounts be appropriated to specific projects in general obligation bonding bills rather than use allocation.

Transfers between allocations (presumably on already passed bonding bills) for a project could not be made except as provided for by additional enabling legislation.

Fiscal impacts are possible but indeterminate; this bill reduces administrative flexibility and may cause additional administrative costs. DOTPF to submit separate fiscal note.

Anselm C. Staack

IV. DATE April 21, 1981 PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Dept. of Revenue/Treasury Division
PHONE 465-2351

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80)

SB
437

Introduced: 4/16/81
Referred: Health, Education &
Social Services and Judiciary

IN THE SENATE BY STIMSON, FISCHER, RODEY AND KELLY

SENATE BILL NO. 437

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential communications between students and [teachers]."

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

* Section 1. AS 09.25 is amended by adding new sections to read:

Sec. 09.25.300. TEACHERS' PRIVILEGE. (a) A [teacher] may not be compelled to disclose a confidential communication made to the [teacher] by a student while the [teacher] is acting in the course of his duties if the communication is made privately and relates to

(1) the personal affairs of the student or the family of the student, and would tend to damage [or incriminate] the student or the family if disclosed; or

(2) the student's use of [or sale of] drugs or alcoholic beverages.

(b) A [teacher] may disclose a communication described in (a) of this section if

(1) the student who made the communication gives permission to have it disclosed; or

(2) the student's condition presents a clear and imminent danger to the student or to others and the [teacher] discloses the communication only to the extent necessary to take emergency measures which the situation demands.

(c) A [teacher] who in good faith [discloses or] refuses to disclose a communication described in (a) [or disclosed a communication under (b) of this section] of this section is immune from civil or criminal liability for the disclosure or failure to disclose.

Sec. 09.25.310. APPLICATION OF TEACHERS' PRIVILEGE. AS 09.25.300 applies to a hearing held under the law of this state

(1) before a district court, the superior court, the court of appeals, or the supreme court;

(2) before a court commissioner, referee, or court appointee;

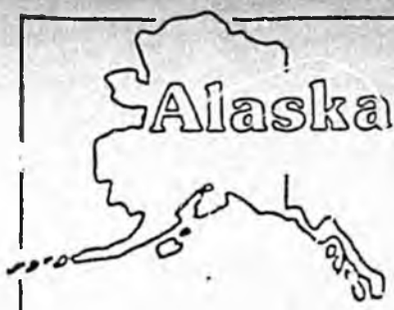
(3) before an agency or representative of an agency of the state or a municipality; or

(4) before any other forum of the state, the United States, or another state.

Sec. 09.25.320. DEFINITION. In AS 09.25.300 - 09.25.320 "teacher" means

(1) a certificated employee working in a public school in the state who is in a teaching, supervisory, administrative, or other position requiring a teaching certificate;

(2) an instructor or administrator working in a community college established under AS 14.40.560 - 14.40.640.



Alaska Statewide Student Association

P.O. BOX 548
DOUGLAS, ALASKA 99824

REPRESENTING STUDENTS OF THE UNIVERSITY OF ALASKA STATEWIDE SYSTEM

POSITION PAPER: SB 437 (re: Teacher-student confidentiality)

This bill deals not only with primary-secondary education, but with community colleges as well. The result of the bill would be to improve the confidence of students in the confidentiality of private conversations with their teachers.

In many cases a particular teacher may be the only person a student feels he or she really can talk to about a particular personal problem. Teachers are semi-authority figures who deal with young people on a regular basis and can provide better counsel than, say, the guys in the locker room or on the street corner. Students should be encouraged to take their problems to people with some knowledge and experience.

Teacher-student relationships should be on the same confidential level as those of lawyer-client, priest-penitent, or doctor-patient. We urge you to pass this bill.

--Ken Kirk, Director, ASSA

ASSA

NATIONWIDE STATUTES DEALING WITH CONFIDENTIALITY:

OREGON: 44.040 Confidential communications. (1) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(i) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or porceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of the student, and which if disclosed would tend to damage or incriminate the student or family. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional staff member as provided in ORS 342.175, 342.177 and 342.180.

(k) A certificated school counselor regularly employeed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alchoolic liquor. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional school counselor as provided in ORS 342.175, 342.177 and 342.180. However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such emergency measures as the situation demands.

North Carolina: 8-53.4. School counselor privilege. No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege

conferred; provided further that the preciding judge may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice. (]97], c. 943.)

Nevada: 49.290 Counselor and pupil privilege. 1. As used in this section, "counselor" means a person who is regularly employed by a public or private school in this state as a counselor, psychologistor psychological examiner for the purpose of counseling pupils, and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to engage in pupil counseling. 2. Except for communications relating to any criminal offense the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

49.291 Teacher and pupil privilege. 1. As used in this section, "tacher" means a person who is regularly employed by a public or private school in this state as a teacher or administrator, and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to teach or perform administrative functions in schools. 2. Communications by a pupil to a teacher concerning the pupil's possession or use of drugs or alcholic beverages made while the teacher was counseling or attempting to counsel such pupil are privileged communications and the teacher shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which the pupil is a party.

Michigan: 600.2]65 School teachers and employees; disclosing of students' communications. Sec. 2]65. No teacher, guidance counselor, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained from him by such records or such communications; nor to produce such records or transcript thereof, except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 21 years of age or over, or, if such person is a minor, with the consent of his or her parent or legal guardian.

Montana: 26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

Connecticut: Sec. 10-154a. Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students. (a) As used in this section, (1) "school" means a public school as defined in section 10-183b or a private elementary or secondary school attendance at which meets the requirements of section 10-184; (2) a "professional employee" means a person employed by a school who (A) holds a certificate from the state board of education, (B) is a member of a faculty where certification is not required, (C) is an administration officer of a school, or (D) is a registered nurse employed by or assigned to a school; (3) a "student" is a person enrolled in a school; (4) a "professional communication" is any communication made privately and in confidence by a student to a professional employee of such student's school in the course of the latter's employment.

(b) Any such professional employee shall not be required to disclose any information acquired through a professional communication with a student, when such information concerns alcohol or drug abuse or any alcoholic or drug problem of such student but if such employee obtains physical evidence from such student indicating that a crime has been or is being committed by such student, such employee shall be required to turn such evidence over to school administrators or law enforcement officials within two school days after receipt of such physical evidence, provided if such evidence is obtained less than two days before a school vacation or the end of a school year, such evidence shall be turned over within two calendar days after receipt thereof, excluding Saturdays, Sundays, and holidays, and provided further in no such case shall such employee be required to disclose the name of the student from who he obtained such evidence and such employee shall be immune from arrest and prosecution for the possession of such evidence obtained from such student.

(c) Any physical evidence surrendered to a school administration pursuant to subsection (b) of this section shall be turned over by such school administrator to the commissioner of consumer protection or the appropriate law enforcement agency within three days after receipt of such physical evidence, for its proper disposition, provided if such evidence is obtained less that htree days before a school vacation or the end of a school year, such evidence shall be turned over within three calendar days from receipt thereof, excluding Saturdays, Sundays, and holidays.

(d) Any such porfessional employee who, in good faith discloses or does not disclose, such professional communication, shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and shall have the same immunity with respect to any judicial proceeding which results from such disclosure.

Idaho: 9-203. Confidential relations and communications. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any publi or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

Iowa: No qualified school guidance counselor, who has met the certification and approval standards of the department of public instruction as provided in section 257.25, subsection 9, who obtains information by reason of his employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose nay confidential communications properly entrusted to him by a pupil or his parent or guardian in his capacity as a qualified school guidance counselor and necessary and proper to enable him to perform his duties as a qualified school guidance counselor.

dering relationships in a commercial world, can hardly be said to have delegated to the landlord an exclusive prerogative of the sovereign. As in Flagg Bros., the statute at issue permits but does not compel creditor self-help.

In enacting the distraint procedures, the state only announced the circumstances under which a private individual may act. When a private person merely takes advantage of a self-help remedy recognized by the state, his actions are not attributable to the state.—Aldisert, J.

—CA 3; Luria Brothers & Co., Inc. v. Allen, 3/15/82.

Mass Media

COURT PROCEEDINGS—

Television station's First Amendment right to gather news is not violated by federal district court order that refused to allow broadcast coverage of lawsuit settlement negotiations, held in federal courthouse pursuant to court order, that were open to nonbroadcast press coverage.

A television station seeks a writ of mandamus requiring a federal district judge to allow television broadcast coverage of negotiations undertaken in a federal courthouse to settle a lawsuit. The suit was filed by five registered voters against the Colorado governor and other state officials and sought to have a three-judge court appointed to formulate a redistricting plan for the state prior to the 1982 congressional election. The case was assigned to the respondent judge, who ordered the governor and members of the legislature to attempt to work out a compromise redistricting plan. When the negotiators reported their lack of progress, they were directed to a jury room and ordered to continue their efforts. Later in the day, negotiations continued in a magistrate's courtroom. The negotiations were unsuccessful and the lawsuit later went to trial. The trial court permitted the press to be present during the negotiations, but denied a request that television cameras be allowed in the meeting rooms, citing Rule 16 of the local rules of practice for the Colorado district courts, which prohibits the use of cameras in the courthouse.

The television station contends that the court's ruling violated its First Amendment right to gather news. The First Amendment does not guarantee the media a constitutional right to televise inside a courthouse, and courts may impose restrictions upon media access to courtrooms and courthouse premises when necessary to protect and facilitate the proper administration of the judicial system. It is not necessary to consider whether application of Rule 16 could, under different circumstances, infringe upon the media's First Amendment rights. It is enough to conclude that it did not do so in this case.

The television station was not denied access to the meetings. Its representative was free to attend, take notes, and disseminate any information obtained. The room in which the initial meeting was held was small and space was limited. Jury trials were taking place elsewhere in the courtroom. Under these circumstances, the potential for disruption of the meeting and other judicial proceedings outweighed any benefit to the television station and the public from a visual presentation of the meeting room.—Seymour, J.

—CA 10; Combined Communications Corp. v. Finesilver, 3/17/82.

PRIVILEGE—

Journalists enjoy qualified common law privilege against disclosure of confidential sources in Washington civil actions, and, if reporter's interest in nondisclosure is supported by need to preserve confidentiality, this privilege can only be overcome by showing that underlying claim is meritorious, that information sought is necessary to such claim, and that reasonable effort has been made to acquire information by other means.

A newspaper defendant in a libel action was ordered by the trial court to answer certain pre-trial interrogatories concerning its confidential sources for the allegedly libelous article. Plaintiff contends that there is no First Amendment privilege against disclosure of confidential sources, and that the creation of any privilege is a matter for the legislature, not the courts.

Even though some states have found a qualified First Amendment privilege and some have not, this is hardly enough to justify venturing onto the uncertain terrain of federal constitutional interpretation if it is not necessary to do so. Where a case is not governed by statute, as is the circumstance here, it is appropriate for a court to apply the common law to determine the outcome of the case.

Testimonial privilege has not been favored in the common law. Four fundamental conditions have been seen as necessary to establish such a privilege: first, the communication must originate in a confidence; second, the element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; third, the relation must be one which in the opinion of the community ought to be fostered; and, fourth, the injury that would be caused by disclosure must be greater than the benefit gained.

The first two conditions are normally present. The third, while perhaps not present in an earlier time, does exist with considerable force today. Given both the complex and diffuse nature of modern society, and the increasing need for journalists to convey information to citizens, this relationship is one which ought to be fostered. As to the fourth condition, the court believes that the injury from failing to establish the privilege would be greater than the benefit to be gained by requiring the testimony in civil litigation.

This qualified privilege can be defeated, if the trial court finds that three standards have been met. First, there must be a showing that the claim is meritorious, that it is not frivolous or brought for the purpose of harassment. Second, the information sought must be necessary or critical to the cause of action or defense pleaded. Third, a reasonable effort must be made to acquire the desired information by other means. Even when the information is critical and necessary to the plaintiff's case, the plaintiff must exhaust reasonably available alternative sources before a reporter can be compelled to disclose. Finally, in addition to considering these standards, the court must also find that the interest of the reporter in nondisclosure is supported by need to preserve confidentiality. The court should look to how the reporter received the information and whether the source has a reasonable expectation of confidentiality. This requirement is needed to prevent journalists from invoking the protection of their nameless sources when no confidential relationship need be protected.—Dolliver, J.

Concurrence. The holding of this case should be based on the First Amendment, not on the common law. No purpose is served by deciding the case on common law grounds to avoid recognition of the constitutional interests being balanced.—Utter, J.

Dissent. If some kind of shield law for reporters is necessary under present circumstances, it must be created. The legislature, consisting of some 147 members, is better able to determine the need for creating such a shield law than is this court.—Rosellini and Dore, JJ.

—Wash SupCt; Senear v. Daily Journal-American, 3/4/82.

Product Safety and Liability

STRICT LIABILITY—

Manufacturer is strictly liable in Ohio for defectively designed product if product is more dangerous than ordinary consumer would expect or if benefits of challenged design do not outweigh risk inherent in such design.

A punch press operator brought a product liability action against the machine manufacturer after she injured her hand by accidentally activating the press while trying to reposition the foot switch.

Both parties assert that Temple v. Wean United, Inc., 50 OhioSt2d 317 (1977), is dispositive of this case. There the plaintiff, who was injured while operating a punch

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

January 22, 1981

SUBJECT: Confidentiality for Teachers/Counselors
(Work Order No. 12-0422)

TO: Senator Terry Stimson

FROM: Billy G. Berrier
Director
Division of Legal Services

In response to your request, I have enclosed statues from Connecticut, Idaho, Iowa, Michigan, Montana, Nevada, North Carolina, and Oregon which give a confidential or privileged status to communications between students and school teachers/ school counselors. Pertinent sections are highlighted.

Generally, these statutes are placed under titles concerning court rules -- evidence. The teacher or counselor is not considered competent to testify where the privilege exists, unless waived by the student.

If you need further information, please call.

BGB:GC:blg

Enclosures

RIGHTS, COMPETENCY AND PRIVILEGES OF WITNESSES

44.010 Witness defined. A witness is a person whose declaration is received as evidence for any purpose, whether it is made on oral examination, by deposition or by affidavit.

44.020 Who may be witness. All persons, except as provided in ORS 44.030, who, having organs of sense can perceive, and perceiving can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action, suit or proceeding are excluded; nor those convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the last, the credibility of the witness may be drawn in question, as provided in ORS 44.370.

44.030 Persons not competent as witnesses. The following persons are not competent witnesses:

(1) Those of unsound mind at the time of their production for examination.

(2) Children under 10 years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Whenever a child under the age of 10 years is produced as a witness, the court shall, by an examination made by itself, publicly or separate and apart with counsel present, ascertain to its own satisfaction whether the child has sufficient intelligence and sense of obligation to tell the truth to be safely admitted to testify.

44.040 Confidential communications. (1) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(a) A spouse shall not be examined for or against the other spouse without consent of the other spouse; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. The exception does not apply to a civil action or proceeding by one against the other, or to a criminal action or proceeding for a crime committed by one against the other.

(b) An attorney shall not, without the consent of the client, be examined as to any communication made by the client to the attorney, or the advice given by the attorney thereon, in the course of professional employment.

(c) A member of the clergy shall not, without the consent of the person making the communication, be examined as to any confidential communication made to the member in the professional character of the member. As used in this paragraph, "member of the clergy" means a minister of any church, religious denomination or organization who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(d) Subject to ORCP 44, a regular physician or surgeon shall not, without the consent of the patient, be examined in a civil action or proceeding, as to any information acquired in attending the patient, which was necessary to enable the physician or surgeon to prescribe or act for the patient.

(e) A public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.500.

(f) A stenographer shall not, without the consent of the employer, be examined as to any communication or dictation made by the employer to the stenographer in the course of professional employment.

(g) A licensed professional nurse shall not, without the consent of a patient who was cared for by such nurse, be examined in a civil action or proceeding, as to any information acquired in caring for the patient, which was necessary to enable the nurse to care for the patient.

(h) A licensed psychologist, as defined in ORS 675.010, shall not, without the consent of the client, be examined as to any communication made by the client to the psychologist, or the advice given by the psychologist thereon, in the course of professional employment.

(i) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of

he student, and which if disclosed would tend o damage or incriminate the student or family. Any violation of the privilege provided by his paragraph may result in the suspension of certification of the professional staff member as provided in ORS 342.175, 342.177 and 342.180.

(j) A physician licensed to practice medicine by the Board of Medical Examiners for he State of Oregon and a local health authority officer or employe shall not be examined in a civil or criminal court proceeding as to the existence or contents of any records of a person examined or treated for an infectious venereal disease without the consent of the person examined or treated for such disease unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

(k) A certificated school counselor regularly employed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional school counselor as provided in ORS 342.175, 342.177 and 342.180. However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such other emergency measures as the situation demands.

(L) A clinical social worker registered by the State Board of Clinical Social Workers shall not be examined in a civil or criminal court proceeding as to any communication given him by a client in the course of noninvestigatory professional activity when such communication was given to enable the registered clinical social worker to aid the client, except:

(A) When the client or those persons legally responsible for the client's affairs give consent to the disclosure;

(B) When the client initiates legal action or makes a complaint against the registered clinical social worker to the board;

(C) When the communication reveals the intent to commit a crime or harmful act;

(D) When the information reveals that a minor was the victim of a crime, abuse or neglect; or

(E) When the registered clinical social worker is a public employe and the public employer has determined that examination in a civil or criminal court proceeding is necessary in the performance of the duty of the social worker as a public employe.

(m) A naturopathic physician licensed under ORS chapter 685 by the Naturopathic Board of Examiners shall not, without the consent of his patient, be examined in a civil action, suit or proceeding, as to any information acquired in attending the patient, which was necessary to enable him to act for the patient.

(2) If a party to the action or proceeding voluntarily offers testimony as a witness, it is deemed a consent to the examination also of a spouse, attorney, clergyman, physician or surgeon, stenographer, licensed professional nurse, licensed psychologist, licensed naturopath, a registered clinical social worker, a certificated staff member, local health authority officer employe or a certificated school counselor on the same subject. [Amended by 1957 c.44 §1; 1963 c.396 §16; 1971 c.[illegible].2 §4; 1973 c.136 §6; 1973 c.777 §19a; 1973 c.794 §13; 1975 c.694 §1; 1975 c.726 §1; 1977 c.656 §1; 1977 c.677 §12a; 1979 c.284 §79; 1979 c.731 §2; 1979 c.744 §1a; 1979 c.769 §12b]

44.050 Judge or juror as a witness. The judge or any juror may be called as a witness by either party, but in the former case it is in the discretion of the court or judge to order the trial to be postponed or suspended and to take place before another judge.

44.060 Facts to which a witness may testify. A witness can testify of those facts only which he knows of his own knowledge, that is, which are derived from his own perceptions, except in those express cases in which his opinions or inferences, or the declarations of others, are admissible.

44.070 What questions witness must answer. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a direct tendency to subject him to punishment for a felony, or to degrade his character, unless, in the latter

§ 8-53.1. Physician-patient privilege waived in child abuse. — Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes of North Carolina. (1965, c. 472, s. 2; 1971, c. 710, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "related to a report pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes of North Carolina" for "resulting from a report pursuant to §§ 14-318.2 and 14-318.3" at the end of the section.

§ 8-53.2. Communications between clergymen and communicants.

Editor's Note. —
For comment surveying North Carolina law of relational privilege, see 50 N.C.L. Rev. 630 (1972).

§ 8-53.3. Communications between psychologist and client.

Editor's Note. —
For a comment on the evidentiary implications at trial of the physician-patient privilege, see 12 Wake Forest L. Rev. 849 (1976).
For comment surveying North Carolina law of relational privilege, see 50 N.C.L. Rev. 630 (1972).

Applied in State v. Crews, 296 N.C. 607, 252 S.E.2d 745 (1979).

§ 8-53.4. School counselor privilege. — No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege conferred; provided further that the presiding judge may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice. (1971, c. 943.)

Editor's Note. — For comment surveying North Carolina law of relational privilege, see 50 N.C.L. Rev. 630 (1972).

§ 8-53.5. Communications between marital and family therapist and client(s). — No person, duly authorized as a certified marital and family therapist, nor any of his employees or associates, shall be required to disclose any information which he may have acquired in rendering professional marital and family therapy services, and which information was necessary to enable him to render professional marital and family therapy services: Provided, that the presiding judge of a superior court may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice. (1979, c. 697, s. 2.)

(a) Any statement made by a person in attendance at such meeting who is a party to an action or proceeding the subject of which is reviewed at such meeting.

(b) Any statement made by a person who is requesting hospital staff privileges.

(c) The proceedings of any meeting considering an action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) Any matter relating to the proceedings or records of such committees which is contained in health care records furnished in accordance with NRS 629.061.

(Added to NRS by 1971, 785; A 1977, 1314)

49.275 Privilege for news media. No reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station may be required to disclose any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
2. Before the legislature or any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

(Added to NRS by 1971, 786; A 1975, 502)

49.285 Public officer as witness. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

(Added to NRS by 1971, 786)

49.290 Counselor and pupil privilege.

1. As used in this section, "counselor" means a person who is regularly employed by a public or private school in this state as a counselor, psychologist or psychological examiner for the purpose of counseling pupils, and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to engage in pupil counseling.
2. Except for communications relating to any criminal offense the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

(Added to NRS by 1973, 1840; A 1979, 1639)

49.291 Teacher and pupil privilege.

1. As used in this section, "teacher" means a person who is regularly employed by a public or private school in this state as a teacher or administrator and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to teach or perform administrative functions in schools.

2. Communications by a pupil to a teacher concerning the pupil's possession or use of drugs or alcoholic beverages made while the teacher was counseling or attempting to counsel such pupil are privileged communications and the teacher shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which the pupil is a party.

(Added to NRS by 1973, 1840;A 1979, 1639)

MISCELLANEOUS PRIVILEGES

49.295 Husband-wife privilege; limitations.

1. Except as provided in subsections 2 and 3 and NRS 49.305:

(a) A husband cannot be examined as a witness for or against his wife without her consent, nor a wife for or against her husband without his consent.

(b) Neither a husband nor a wife can be examined, during the marriage or afterwards, without the consent of the other, as to any communication made by one to the other during marriage.

2. The provisions of subsection 1 do not apply to a:

(a) Civil proceeding brought by or on behalf of one spouse against the other spouse;

(b) Proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse;

(c) Proceeding brought by or on behalf of a spouse to establish his competence;

(d) Proceeding in the juvenile court pursuant to chapter 62 of NRS; or

(e) Criminal proceeding in which one spouse is charged with:

(1) A crime against the person or the property of the other spouse or of a child of either, or of a child in the custody or control of either, whether such crime was committed before or during marriage.

(2) Bigamy or incest.

(3) A crime related to abandonment of a child or nonsupport of a wife or child.

3. The provisions of subsection 1 do not apply in any criminal proceeding to events which took place before the husband and wife were married.

(Added to NRS by 1971, 786; A 1977, 265; 1979, 460)

18. Argument as to fees paid

Prosecutor's argument, in rape prosecution, that defendant could pay experts larger fee than allowed by court was improper. People v. Cowles (1929) 224 N.W. 367, 246 Mich. 429.

600.2165 School teachers and employees; disclosing of students' communications

Sec. 2165. No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from such records or such communications; nor to produce such records or transcript thereof, except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 21 years of age or over, or, if such person is a minor, with the consent of his or her parent or legal guardian. P.A.1961, No. 236, § 2165, Eff. Jan. 1, 1963.

Historical Note

Prior Laws:

P.A.1915, No. 314, c. XVII, § 85.
P.A.1935, No. 41.
C.L.1948, § 617.85.

Cross References

Privilege,
Child welfare agencies and foster homes, records of and information concerning children, see § 722.104.
Clergy, see § 600.2156.
Physician-patient, see § 600.2157.
Privileged communications, proceedings before criminal trial, see § 767.5a.
Unlawful evidence, disposition or evidence in proceedings in probate court, juvenile division, see § 712A.23.

Law Review Commentaries

Privileged communication; extension of the privilege to communication involving agents. 50 Mich.L.Rev. 308 (1951).

Privileges in federal criminal evidence. Lester B. Orfield, 40 U.Detroit L.J. 403 (1963).

Right of the press to refuse to disclose confidential sources of information, 10 Wayne L.Rev. 599 (1964).

Scientific investigation and defendants' rights, controls created by legislation. 10 Wayne L.Rev. 599 (1964).
37, 42 (1958).

Library References

Witnesses ⇨196.
C.J.S. Witnesses § 254 et seq.
M.L.P. Witnesses § 62.
Michigan Court Rules Annotated, Honigman and Hawkins, 2d Ed., Rule 601.
Michigan Juvenile Court: Law and Practice, Downs (ICLE 1963) § 7.-27, Appendix D.

mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7).

26-1-810. Confidential communications made to public officer. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5).

Part 9

Media Confidentiality Act

26-1-901. Short title. This part shall be known and may be cited as the "Media Confidentiality Act".

History: En. Sec. 1, Ch. 195, L. 1943; R.C.M. 1947, 93-601-1; amd. Sec. 1, Ch. 285, L. 1979.

26-1-902. Extent of privilege. (1) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any

Sec. 10-154. Homes and transportation for teachers. Section 10-154 is repealed.

(1949 Rev., S. 1441; P.A. 78-218, S. 211.)

Sec. 10-154a. Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students. (a) As used in this section (1) "school" means a public school as defined in section 10-183b or a private elementary or secondary school attendance at which meets the requirements of section 10-184; (2) a "professional employee" means a person employed by a school who (A) holds a certificate from the state board of education, (B) is a member of a faculty where certification is not required, (C) is an administration officer of a school, or (D) is a registered nurse employed by or assigned to a school; (3) a "student" is a person enrolled in a school; (4) a "professional communication" is any communication made privately and in confidence by a student to a professional employee of such student's school in the course of the latter's employment.

(b) Any such professional employee shall not be required to disclose any information acquired through a professional communication with a student, when such information concerns alcohol or drug abuse or any alcoholic or drug problem of such student but if such employee obtains physical evidence from such student indicating that a crime has been or is being committed by such student, such employee shall be required to turn such evidence over to school administrators or law enforcement officials within two school days after receipt of such physical evidence, provided if such evidence is obtained less than two days before a school vacation or the end of a school year, such evidence shall be turned over within two calendar days after receipt thereof, excluding Saturdays, Sundays and holidays, and provided further in no such case shall such employee be required to disclose the name of the student from whom he obtained such evidence and such employee shall be immune from arrest and prosecution for the possession of such evidence obtained from such student.

(c) Any physical evidence surrendered to a school administration pursuant to subsection (b) of this section shall be turned over by such school administrator to the commissioner of consumer protection or the appropriate law enforcement agency within three school days after receipt of such physical evidence, for its proper disposition, provided if such evidence is obtained less than three days before a school vacation or the end of a school year, such evidence shall be turned over within three calendar days from receipt thereof, excluding Saturdays, Sundays and holidays.

(d) Any such professional employee who, in good faith, discloses or does not disclose, such professional communication, shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and shall have the same immunity with respect to any judicial proceeding which results from such disclosure.

(1971, P.A. 261, S. 1-3; 1972, P.A. 64; P.A. 78-29; 78-201, S. 29, 33; 78-218, S. 103.)

Sec. 10-155. Emergency teacher training program. The board of trustees for the state colleges may maintain an emergency training program to prepare graduates of approved four-year colleges and universities to teach in the elementary schools of the state. In carrying out such program the board may (a) establish

Idaho

9-203. Confidential relations and communications. — There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(C) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(D) That if the patient be dead and during his life time had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matter in any civil or criminal action to which such child or ward is a party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian. [C.C.P. 1881, § 899; R.S., R.C., & C.L., § 5958; C.S., § 7937; I.C.A., § 16-203; am. 1963, ch. 104, § 1, p. 324; am. 1963, ch. 122, § 1, p. 351; am. 1967, ch. 121, § 1, p. 265; am. 1971, ch. 36, § 1, p. 61; am. 1972, ch. 29, § 1, p. 42.]

Compiler's notes. Section 2 of S.L. 1963, ch. 104 was repealed by S.L. 1975, ch. 242, § 1.

Section 2 of S.L. 1971, ch. 36 declared an emergency. Approved February 27, 1971.

Section 2 of S.L. 1972, ch. 29 declared an emergency retroactive to and including January 1, 1972. Approved February 28, 1972.

Cross ref. Competency of husband and wife in criminal proceedings. § 19-3002.

Party under examination not required to disclose privileged communications, I.R.C.P., Rule 43(b)(4).

Privileges of all witnesses, § 9-1302.

See notes, § 9-201.

Sec. to sec. ref. This section is referred to in § 9-201 and § 39-1312.

Cited in: State v. Orr, 53 Idaho 452, 24 P.2d 679 (1933); Lebak v. Nelson, 62 Idaho 96, 107 P.2d 1054 (1940); Skelly v. Sunshine Mining Co., 62 Idaho 192, 109 P.2d 622 (1941).

ANALYSIS

Binding effect of evidence.
Communications with attorney.
——Waiver of privilege.
Communications with clergy.
Communications with physician.
——Existence of professional relationship.
——Waiver of privilege.
Construction.
Criminal actions.
Reporters.
Testimony of nurses.
Testimony of spouses.
——Waiver of privilege.

Binding Effect of Evidence.

A board, court, or jury must accept as true the positive uncontradicted testimony of a credible witness, unless inherently improbable or rendered improbable by facts and circumstances adduced in evidence. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 172 (1937).

Communications with Attorney.

Third person who, by accident or by design of attorney, overhears confidential communications between client and attorney may be compelled to divulge what he so heard. State v. Perry, 4 Idaho 224, 38 P. 655 (1894).

Communications which pass between one who is merely conveyancer or friendly advisor of grantor or grantee in a deed are not privileged communications under this subdivision. Later v. Haywood, 12 Idaho 78, 85 P. 494 (1906).

When attorney is called as witness and declines to answer a question or produce letters or documents on the ground that same are privileged under provisions of subd. 2 of this section, burden is upon him to show sufficient facts and circumstances to establish the general privileged character of the communications or documents. The rule does not necessitate attorney disclosing the contents of documents or import of

Iowa

GENERAL PRINCIPLES

622.1 Witnesses—who competent. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases, except as otherwise declared. [C51,§2388; R60,§3978; C73,§3636; C97,§4601; C24, 27, 31, 35, 39,§11254; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.1]

622.2 Credibility. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility. [C51,§2389; R60,§3979; C73,§3637; C97,§4602; C24, 27, 31, 35, 39,§11255; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.2]

622.3 Interest. No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interests in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter. [R60,§3980; C73,§3638; C97,§4603; C24, 27, 31, 35, 39,§11256; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.3]

622.4 Transaction with person since deceased. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, mentally ill, or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§11257; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.4]

C97, §4604, editorially divided

Referred to in §622.6

622.5 Exceptions. This prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or guardian shall be examined on his own behalf, or as to which the testimony of such deceased or mentally ill person or lunatic shall be given in evidence. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§11258; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.5]

622.6 Depositions taken conditionally. Any person may have his own deposition, or that of any other person, read in evidence in all cases where his evidence would be incompetent by the provisions of section 622.4, by causing it to be taken, either before or after action is brought, during the lifetime or good mental health of the person against whose executor, heir, or other representative the same is to be used, if such deposition shall have been taken and filed ten days prior to the death or mental illness of such person. If after action is brought, such deposition may be taken in the usual manner; if before, then the same may be taken de bene esse, as provided by law. [C73,§3640; C97,§4605; C24, 27, 31, 35, 39,§11259; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.6]

Perpetuating testimony, R.C.P. 160 et seq.

Referred to in §629.27

622.7 Husband or wife as witness. Neither the husband nor wife shall in any case be a witness against the other, except:

1. In a criminal prosecution for a crime committed one against the other, or

2. In a civil action or proceeding one against the other, or

3. In a civil action by one against a third party for alienating the affections of the other, or

4. In any civil action brought by a judgment creditor against either the husband or the wife, to set aside a conveyance of property from one to the other on the ground of want of consideration or fraud, and to subject the same to the payment of his judgment. [C51,§2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11260; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.7]

S13, §4606, editorially divided

Referred to in §622.74

Exception, §726.4

622.8 Witness for each other. In all civil and criminal cases the husband and wife may be witnesses for each other. [C51,§2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11261; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.8]

622.9 Communications between husband and wife. Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [C51,§2392; R60,§3984; C73,§3642; C97,§4607; C24, 27, 31, 35, 39,§11262; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.9]

Referred to in §622.74

622.10 Communications in professional confidence—exceptions—application to court. No practicing attorney, counselor, physician, surgeon, or the stenographer or confidential clerk of any such person, who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the person in whose favor the same is made waives the rights conferred; nor shall such prohibition apply, as the same relates to physicians or surgeons or to the stenographer or confidential clerk of any such physicians or surgeons, in a civil action to recover damages for personal injuries or wrongful death in which the condition of the person in whose favor such prohibition is made is an element or factor of the claim or defense of such person or of any party claiming through or under such person. Such evidence shall be admissible upon trial of the action only as it relates to the condition alleged. If an adverse party desires the oral deposition, either discovery or

evidentiary, of any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon or desires to call any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon as a witness at the trial of the action, he shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant such permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to such physician or surgeon by the party taking the deposition or calling the witness.

No qualified school guidance counselor, who has met the certification and approval standards of the department of public instruction as provided in section 257.25, subsection 9, who obtains information by reason of his employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to him by a pupil or his parent or guardian in his capacity as a qualified school guidance counselor and necessary and proper to enable him to perform his duties as a qualified school guidance counselor. [C51,§§2393, 2394; R60,§§3985, 3986; C73,§3643; C97,§4608; S13,§4608; C24, 27, 31, 35, 39,§11263; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.10]

Referred to in §122.74, 258A.6, 514B.30

622.11 Public officers. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure. [C51,§2395; R60,§3987; C73,§3644; C97,§4609; C24, 27, 31, 35, 39,§11264; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.11]

622.12 Judge as witness. The judge of the court is a competent witness for either party, and may be sworn upon the trial. In such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. [C51,§2408; R60,§4005; C73,§3645; C97,§4610; C24, 27, 31, 35, 39, §11265; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.12]

622.13 Civil liability. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. [C51,§2396; R60,§3988; C73,§3646; C97,§4611; C24, 27, 31, 35, 39,§11266; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.13]

622.14 to 622.16 Repealed by 65GA, ch 1272, §4.

622.17 Previous conviction. A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof. [C51,§2398; R60,§3990; C73,§3648; C97,§4613; C24, 27, 31, 35, 39,§11270; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.17]

622.18 Moral character. The general moral character of a witness may be proved for the purpose of testing his credibility. [R60,§3991; C73,§3649; C97,§4614; C24, 27, 31, 35, 39,§11271; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.18]

622.19 Whole of a writing or conversation. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39, §11272; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.19]

C97, 14615, editorially divided

622.20 Detached acts, declarations, or conversations. When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§11273; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.20]

622.21 Writing and printing. When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent. [C51,§2400; R60,§3993; C73,§3651; C97,§4616; C24, 27, 31, 35, 39,§11274; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.21]

622.22 Understanding of parties to agreement. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it. [C51,§2401; R60,§3994; C73,§3652; C97,§4617; C24, 27, 31, 35, 39, §11275; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.22]

622.23 Historical and scientific works. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated. [C51,§2402; R60,§3995; C73,§3653; C97,§4618; C24, 27, 31, 35, 39, §11276; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.23]

622.24 Subscribing witness—substitute proof. When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence. [C51,§2403; R60,§3996; C73,§3654; C97,§4619; C24, 27, 31, 35, 39,§11277; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.24]

622.25 Handwriting. Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine. [C51,§2404; R60,§3997; C73,§3655; C97,§4620; C24, 27, 31, 35, 39, §11278; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.25]

622.26 Private writing—acknowledgment. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. [C51,§2407; R60,§4000; C73,§3656; C97,§4621; C24, 27, 31, 35, 39,§11279; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.26]

622.27 Entries and writings of deceased person. The entries and other writings of a person deceased, who was in a position to know the facts therein stat-

Principles of Confidentiality

A position statement approved by ASCA governing Board, November, 1974; reviewed and reaffirmed 1980.

Introduction

The members of the American School Counselor Association affirm their belief in the worth and dignity of the individual. It is the professional responsibility of school counselors to fully respect the right to privacy of those with whom they enter counseling relationships.

A counseling relationship requires an atmosphere of trust and confidence between the client and the counselor. A client has the right to privacy and to expect confidentiality. This confidentiality must not be abridged by the counselor except where there is a clear and present danger to the client or to other persons.

The counselor reserves the right to consult with other professionally competent persons when this is in the interest of the client. Confidentiality assures that disclosures made will not be divulged to others except when authorized by the client. Counseling information used in research and training of counselors should fully guarantee the anonymity of the counselee.

In the event of possible judicial proceedings the counselor should initially advise the school administration as well as the counselee if available, and, if necessary, consult legal counsel. When reports are required to be produced, every effort should be made to limit demands for information to those matters essential for the purposes of the legal proceeding.

Guidelines

1. The main purpose of privileged communication is to offer counselees a relationship in which they will be able to deal with what concerns them without fear of disclosure.

2. In reality, it is the client who is privileged. It is the client's own information and the client has the right to say who shall have access to it and who shall not.

3. The counselor and client must be provided with adequate physical facilities that guarantee the confidentiality of the counseling relationship.

4. With the enactment of Public Law 93-380 which speaks to the rights and privacy of parents and students, great care should be taken with recorded information.

5. Counselors must be concerned about individuals who have access to confidential information. Counselors must adhere to PL 93-380.

6. All faculty and administrative personnel should receive in-service training concerning the privacy rights of students. Counselors should assume the primary responsibility for educating school personnel in this area.

7. It should be the policy of each school to guarantee secretaries adequate working space so that students and school personnel will not come into contact with confidential information, even inadvertently.

8. Counselors should undertake a periodic review of information requested of their clients. Only relevant information should be retained.

9. Counselors must not discuss matters over the telephone. A counselor should insist that a request for information be made in writing on official stationery.

10. Counselors should be aware that it is much more difficult to guarantee confidentiality in group counseling than in individual counseling.

11. Communications made in good faith concerning a student may be classified as privileged by the courts and the communicating parties will be protected by law against legal actions seeking damages for libel or slander. Generally, it may be said that an occasion of this particular privilege arises when one acts in the bona fide discharge of a public or private duty. This privilege may be abused or lost by malice, improper and unjustifiable motive, bad faith, or excessive publication.

12. When a counselor is in doubt about what to release in a judicial proceeding, the counselor should arrange a conference with the judge to explain the counselor's dilemma and get advice on how to proceed.

13. Counselors have a responsibility to encourage school administrators to develop written policies concerning the ethical handling of all records in their school system. The development of additional guidelines relevant to the local situation are encouraged.

14. Finally, it is strongly recommended that state and local counselor associations implement these principles and guidelines with appropriate legislation.

With passage of the Family Educational Rights and Privacy Act, Public Law 93-380 (The Buckley Amendment), great care must be taken with recorded information. It is essential that counselors familiarize themselves with this new law which is a part of the omnibus education amendments of 1974, and support is intent to all their publics.

Provisions of this law on parent and student rights and privacy:

1. Deny federal funds to any education institution that refuses a student's parents access to their child's school record. Parents also have the right to challenge the accuracy of any records.

2. Deny federal funds if records are released to outside groups without parent consent with exception of other school officials, officials in other schools (transfer), some federal officials, court orders and financial aid applications, with clearance procedures of parents even on the exceptions.

All counselors should have a copy of the complete law. The section pertaining to rights and privacy is on pages 88-91, and may be requested from your congressman. A draft of proposed regulations pertaining to the law was published in the Monday, January 6, 1975 *Federal Register.*

Counseling and Guidance Program: Staffing Needs and Responsibilities

(A position statement approved by ASCA governing board, November, 1974; reviewed and reaffirmed 1980)

Introduction

This position of the American School Counselor Association describes the elements of a comprehensive and developmental guidance and counseling program and the criteria upon which the quantity and responsibilities of qualified, differentiated staff members is based. The ASCA statements of counseling role and function for the elementary, middle/junior high, secondary and post secondary settings are an integral part of the design and implementation of guidance and counseling programs.

Philosophy

"Who am I", "Who can I become as a person?", and "How can I best contribute to society?" are questions which guidance and counseling programs help all individuals to answer. In their design and operation, through the curriculum and through specialized approaches, guidance and counseling programs exist to improve the learning environment by involving students, staff, parents, community and others who influence the learning and development of the persons served by the program.

Through individual and group contacts over a period of time the counselor has a major role in helping all persons develop more adequate and realistic concepts of themselves, become aware of educational and occupational opportunities and to integrate their understanding of self and opportunities in making informed decisions.

Program Goals

A guidance and counseling program provides for direct involvement of and service to students, staff and community in order to facilitate achievement of the following program goals.

Assist persons in developing

1. A better understanding and acceptance of themselves: thier strengths and limitations; aptitudes, needs, values, interests and worth as unique individuals.
2. Interpersonal relationships on the basis of mutual respect.
3. Problem-solving and decision-making skills.
4. And accepting increased responsibility for their educational, occupational and avocational development.

Standards

These standards are set forth in a manner which allows local school districts, institutions, agencies and others to design and implement guidance and counseling programs consistent with the unique needs found within each setting.

Program:

1. There is a written statement of objectives developed as a counselor responsibility, and with the involvement of appropriate others, specifying the overall guidance and counseling program as it involves and relates to the needs of the person in the school, institution, agency and community.
2. The basic program of guidance and counseling involves the process of counsulting and coordinating services. The program is comprehensive and developmental and is implemented through the curriculum and through specialized approaches. Orientation, information, appraisal, placement, follow-up, follow-through, referral and research activities are included in the program.
3. There is evidence that all persons throughout the school, institution, agency and community have continuous opportunity to participate in the guidance and counseling program.
4. There is evidence that the guidance and counseling program is systematically planned, implemented and evaluated.
5. The guidance and counseling program is continued on an extended basis during periods when classes are not in session.
6. The guidance and counseling program is community oriented, serving not only students enrolled but also preschoolers, dropouts, graduates and other community citizens.
7. Counselor taught or initiated minicourses in decision-making, value clarification, study skills, and/or similar units are offered.
8. The program serves three to five year old children and their parents where elementary school settings exist.
9. The guidance and counseling program provides other innovative service(s) or activities which are designed to meet unique needs of persons.

Staff:

The American School Counselor Association has, in the past, given considerable thought and attention to the value of specified counselor-pupil ratios which are necessary to achieve the basic objectives of guidance and counseling programs. The absence of specified ratios in these standards should not be interpreted to mean that ratios cannot still serve as useful guides nor that they should not be maintained. ASCA holds the position that appropriate staff shall be employed to implement a guidance and counseling program designed to meet the needs of the persons to be involved in the program.

1. The guidance and counseling staff is qualified and appropriately certificated/licensed according to state agency standards.
2. The guidance and counseling staff is responsible for the design, implementation and evaluation of the services and activities prescribed in the program.
3. Professional, secretarial and/or paraprofessional staff are adequate in numbers to meet the objectives of the program.
4. Provision is made for staff to attend and/or participate in intra- and interprofessional meetings and activities within and outside the state.

Facilities:

Appropriate and meaningful guidance and counseling activities with individuals and groups takes place in a wide variety of settings, the specific environment often being determined by circumstances. There are, however, continuing student, program and staff needs in which privacy and confidentiality of conversation and records require specific counseling facilities.

1. Each counselor is provided with pleasant, private quarters conducive to conferences of a confidential nature and adequate in size to accommodate three to five persons.
2. The counseling facilities are located in an area readily accessible to students and others.
3. Each counselor's quarters is equipped with adequate telephone service.
4. A conveniently located area adequate for group guidance and counseling activities is available.
5. Adequate provision is made for the storage or display of all records and materials used by the counselor(s) in carrying out the guidance and counseling program.

Who Cares?

The counselor's role in the American school

This is ASCA's film designed for use with many audiences: PTA's and other parent groups . . . school boards . . . school staff, both administrative and teaching . . . and any group with a concern for education.

It's 28 minutes, 16 mm in color and sound, with a users guide. Order rental or purchase from ASCA Film Department, 2 Skyline Place, Suite 400, 5203 Leesburg Pike, Falls Church, Virginia 22041.

6. Career resource center(s) are established and appropriately staffed to facilitate use of career awareness, exploration, planning, preparation and profession materials, equipment and supplies.

Materials and Equipment:

1. There is adequate budget for purchasing, maintaining and developing the materials and equipment necessary to achieve the objectives of the guidance and counseling program.

The Paraprofessional in Guidance and Pupil Personnel Services

(A position statement approved by ASCA governing board, November, 1974; reviewed and reaffirmed 1980)

A major goal of a guidance program is to enable students to make better personal, educational and career choices and to continue growth toward self-realization.

This may be accomplished through individual and group counseling, consultation and coordination with student, teachers, administrators, parents and the community. Of all the areas of education, counseling and pupil personnel services offer the best opportunities for individualization. In cooperation with all work setting personnel, humanization of education can become a reality.

To enable counselors to function more effectively and proficiently, the assignment of routine, incidental and technical duties must be performed by the paraprofessional.

The utilization of paraprofessionals in guidance and pupil personnel services provides a means of developing greater effectiveness within the guidance program.

With the appropriate education and training of carefully selected personnel, paraprofessionals under careful supervision could perform in the following areas:

As a clerical worker
- collect and maintain current guidance files
- reproduce materials needed for the counselor in group and/or individual conferences
- assist with all student record keeping
- assist students in completion of varied forms and applications.

As a resource person
- assist with the establishment and continuation of contacts with agencies and/or organizations in order to acquire information for the counselor; i.e., Chamber of Commerce, Employment Security Commission, etc.
- catalog and file materials of an educational, occupational, avocational and personal nature
- disseminate factual information and materials to appropriate publics
- maintain appropriate personnel and information records
- procure supplies and prepare materials for counselor use
- perform routine collecting and analytical statistical operations
- operate A-V equipment

As an assistant in the area of assessment, specifically testing
- collect and distribute test materials
- assist counselor in administering and monitoring group tests
- prepare and organize answer sheets for machine scoring, hand scoring small quantities (not interpretation of test results)

The paraprofessional should:
- Possess a sensitivity to the problems and needs of children
- Manifest an interest in working with children and youth
- Be knowledgeable in the role of the counselor and the total guidance program.

The counselor should:
- Assist in the selection of paraprofessionals
- Assume the responsibility of supervision of paraprofessionals.

For future planning, the professional organization should:
- Encourage the post secondary educational systems to offer training for paraprofessionals in guidance and pupil personnel services
- Encourage the collaboration of state education agency personnel, post secondary student services personnel, and local education agencies guidance personnel in instituting such courses and/or programs.

The training for paraprofessionals should include secretarial training, operation and use of multi-media materials, practical investigations and/or research techniques, human relations, group testing, ethics and home-school-community resources.

ASCA POSITION STATEMENTS

Student Rights: A Developing Right to Know

(A position statement approved by ASCA governing board, November, 1974)

The American School Counselor Association supports the constitutional rights of all persons to their individual and collective freedom to express views and feelings which have also been recognized by the courts of this nation.

The United States Congress has enacted into law protection of the rights and privacy of parents and students, particularly relating to the records maintained on each student. (PL 93-380) Our children and youth need specific interpretation related to the constitutional and lawful rights related to the rights to which present and former students (and parents) are entitled.

Therefore, the American School Counselor Association hereby formally supports the Constitution of the USA, in particular the first and fourteenth amendments as related to this position statement, and Public Law 93-380. ASCA thereby is committed to be actively involved in assuring that students be treated as citizens of the USA with all due rights, privileges and responsibilities.

Counselors are serving as advocates, activists, and catalysts for assuring these rights. Therefore, ASCA further supports and promotes:

1) improved record keeping;
2) law-abiding, discriminating release of information / data from student records;
3) the recording of positive, meaningful and non-valuative evaluations on student records and documents;
4) positive reinforcements in the learning processes;
5) student orientation to all rights and due processes open to him/her ie., how to get one's rights as a student; what to do if searched, seized or interrogated; reviewing one's school records (or parental review of same); resources of assistance available to students; freedom to express one's views; freedom of the press; disseminating information regarding state statutes on corporal punishment; the right to have a Student Bill of Rights in the school, school system, or state;
6) student orientation and understanding of student responsibilities as well as student rights under the Constitution and PL 93-380 without understanding student rights as has more frequently been the case.

ASCA supports legislation and court actions which will insure rights of students as citizens of the U.S.A. ASCA's position is that the counselor is the "student advocate" — supporter, intercessor, pleader, defender, through speaking, writing, and action!

Teacher-Counselor Working Relationships in Career Education

(A position statement approved by ASCA Governing board, November, 1974; reviewed and reaffirmed 1980)

Career education stresses an interdisciplinary approach to planning educational experiences for students. Such experiences should be planned based on input from all aspects of the curriculum, as well as input from the students involved. In the day-to-day schedules of professionals involved in education, provision must be made for times and places to share across discipline lines. Both the counselor and the teacher are key components of any professional education planning team. Each must share a responsibility for facilitating joint planning and dialogue regarding curriculum development in career education.

The guidance program can be viewed as including three components: consultation, coordination and counseling. Counselors and teachers must develop the kinds of working relationships which assure the maintenance of these components. Under the philosophy of career education, the processes of self-concept development, values clarification and decision-making skills offer areas where the counselor-teacher team must work together in translating these processes into action strategies.

ASCA POSITION STATEMENTS

Drug Counseling

(A position statement approved by ASCA governing board, March, 1975; a revision of former statement on "Counselor Role in Drug Counseling.")

The American School Counselor Association supports a position that serves as a frame of reference for counselors working with counselees involved or potentially involved in the drug culture. This position serves as a guide and as support for counselors in all work settings.

The counselor respects the counselee's dignity, integrity and self-worth in a relationship of trust. Counselors help counselees to understand themselves as self-respecting human beings, while helping them to accept responsibility for their actions. Counselors discuss with counselees any conflicting responsibilities as they relate to legal and/or individual limits to confidentiality.

Counselors focus on the personal concerns of the counselee rather than the drugs themselves, since the former may be the cause and the latter, a symptom. Counselees' problems may be beyond the expertise of the counselor. Referral to appropriate agencies and/or other professional consultation is an integral part of the counselor's responsibility to the client. Counselors stimulate a continuing dialogue among school and community resources to enhance and initiate services to students and faculty.

The counselor has an obligation to respect the basic rights and responsibilities of the parents in their concerns with their children. The counselor must use information shared by parents in accord with prescribed professional ethics of the American School Counselor Association and within the limitations defined by local, state and federal laws. Referral services may be deemed appropriate by the parties concerned and the counselor will be able to recommend such agencies.

Categorical Funding for Support of Counseling and Guidance Services

(A position statement approved by ASCA governing board, November, 1974)

One of the critical issues which has faced supporters of guidance, counseling and testing programs for some number of years, has been the issue of categorical aid vs. consolidated or block grants especially related to the Elementary and Secondary Education Act, Title III. The position of the APGA Government Relations Committee as of August, 1973, was one of insistance on categorical funding of ESEA III and against further consolidation of ESEA III with any other Elementary and Secondary titles. The governing board of the American School Counselor Association strongly endorses this position.

The position is further reinforced by:

1. The value and need for categorical funding being stressed by guidance personnel in state departments and big city school systems.
2. Categorical funding as it now exists, gives assurances for the continuation of full funding of counseling and guidance programs and activities throughout state education agencies and local education agencies across the country.
3. Consolidation could mean that counseling and guidance programs would suffer at the state level in favor of more powerful educational lobbies and political pressure groups seeking the federal dollars in a broadly consolidated educational program.

Therefore, the American School Counselor Association joins other national education organizations in support of categorical funding for support of counseling and guidance services.

The Necessary Cooperation: Rehabilitation and School Counselors Must Work Together

(A joint position statement approved by the American School Counselor Association Governing Board and the American Rehabilitation Counseling Association in April 1979.)

Introduction

Because school counselors and rehabilitation counselors provide essential support services, they must work more closely with each other in the counseling and placement of handicapped children. Public Law 94-142, the Education for All Handicapped Children Act (Section 121a. 13; 121a. 137), mandates services in which school counselors and rehabilitation counselors assess student needs, evaluate interests and aptitudes, and aid in the formulation of educational and vocational goals.

Eligibility for the school component will be determined through the evaluation process as outlined in the law. Rehabilitation and school counselors need to be included in the development of the Individual Educational Plans (IEP). People with physical, mental, or emotional handicaps are generally eligible for rehabilitation services. When the student leaves school, the transition to another program (possibly through rehabilitation services) or employment will be smoother because of the team efforts of the rehabilitation and school counselors.

Statement Defining Issue

Rehabilitation counselors and school counselors currently work independently of each other when providing services to handicapped children. Expertise, services, and information should be shared for the benefit of the pupil. Also, state and federal laws for the handicapped either require or direct cooperation between agencies.

Statement of Position

The passage of PL 94-142, the Education for All Handicapped Children Act, places the responsibility of providing public education for all special needs children (ages 3 through 21) on the local public schools. Although the responsibility rests with the school system, state agencies are required to share information, expertise, and services. The law makes it national policy to ensure that all handicapped children have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.

Specifically, rehabilitation counselors and school counselors need to communicate with each other as frequently as possible. Both rehabilitation and school counselors should be included on the IEP teams. Services to the high-school age handicapped population should include vocational rehabilitation counseling and preparation for post-high-school programs with the full complement of rehabilitation services (e.g., corrective surgery, living arrangements, hospitalization, prosthetic appliances, transportation).

Rehabilitation counselors should provide consultation on the social and vocational aspects of disabilities as well as technical assistance with vocational program planning.

School counselors should help rehabilitation counselors through appropriate communications concerning the progress and needs of students. School and rehabilitation counselors should share information about student interests, aptitudes, educational and vocational goals. Rehabilitation and school counselors are responsible for implementing the services required by the individual student's needs.

School and rehabilitation counselors should jointly develop and arrange appropriate aptitude, interest, and achievement testing as well as medical, psychological, and vocational evaluations.

The rehabilitation and school counselors must work together to assist the student in developing and implementing a rehabilitation program that will lead to appropriate employment. This program may include further educational or vocational training as necessary.

In conclusion, it is imperative that handicapped children receive the educational and related services necessary to function in society in the least restrictive environment. As team members, school counselors and rehabilitation counselors can be of greatest assistance to handicapped children by combining resources and expertise in the development and implementation of Individual Educational Plans now mandated by federal legislation. The long-needed cooperation between school counselors and rehabilitation counselors will be of tremendous benefit in accomplishing these goals.

Counselors Completing the Endorsement* Section of College Application Materials

(A policy statement originally approved by ASCA governing board, May, 1972, and amended November, 1974; reviewed and reaffirmed 1980)

Counselors charged with the responsibility of completing college application information should not complete the endorsement* section of such application materials. Furthermore, ASCA will make this policy known to appropriate associations to delete such endorsement sections from college application forms.

The rationale for this policy is as follows:

ASCA recognizes the role of the school counselor in the admissions process as one of providing counseling services to the student, which enables him/her to make decisions about post secondary education. The school furnishes sufficient objective data concerning the student's qualifications for post secondary education. Anything that could impede this counseling process works to the detriment of the student, the school and the post secondary institution.

The endorsement section of transcript-recommendation forms can be such an impediment. The counselor does not have data on the pool of current applicants with whom a given student will be competing at a given post secondary institutions. Indeed, the post secondary institution does not have this data until its own pool of current applicants has been completed. Nor does the counselor have information on the current specific needs a post secondary institution has to round out its student body. Since this information is not available to a counselor, a specific endorsement of the student is meaningless.

Also, the endorsement section of the transcript-recommendation form can lead a student to believe that the secondary school and/or counselor makes the admission decision. This is not a desirable conclusion since this belief is harmful to the counseling relationship and since the decision to admit is that of the post secondary institution.

*The endorsement section of college application forms is interpreted to be that portion of the application that requires a counselor to "recommend," "not recommend," or "recommend conditionally" a student to be admitted to a post secondary institution. This policy is not intended to delete all counselor comments or recommendations from college application forms.

The Counselor and Negotiations

(A position statement approved by ASCA governing board, November, 1974.)

The role of a counselor in negotiations must be based on the alignment of the counselor in the bargaining structure of the work setting. It is the responsibility of that counselor to work for and support the bargaining unit in its attempts to improve working conditions and improve the education of children.

STANDARDIZED GROUP I.Q. TESTING

A Position Statement of the American School Counselor Association

There is concern among educators as well as various groups within the public sector regarding the use of standardized, group intelligence tests or the so called I.Q. tests. Users of these tests cite several reasons why such testing should be discontinued. Concern centers around the following distinct issues.

The first issue is the utilization of I.Q. tests to categorize individuals. Children have diverse talents and abilities, and the purpose of schools is to nurture these so that optimal educational development takes place. This makes categorization based on the bell-shaped curve inappropriate.

A second issue is that standardized group I.Q. tests do not measure what they purport to measure. A paper and pencil test composed of multiple choice items is not an adequate means for measuring the complexities of human intelligence. As a result of these limitations, inadequate interpretations may be made about children's abilities.

The third issue deals with test basis. The test content is based primarily on white middle class culture and values. Interpretations tend to be inaccurate and misleading when used with students from other types of backgrounds. Consequently, some students are in reality being classified as a result of their socioeconomic or racial status.

The final issue is that standardized tests of intelligence are used throughout the nation in ways which permanently effect the self image of the tested. This alters their own aspirations as to their probable futures and may influence the expectations of their teachers.

It is the position of the American School Counselor Association to oppose continued use of standardized group intelligence tests. ASCA joins with other educational groups in working toward a national discontinuation of such testing until a time when the problems with the tests and their users can be corrected.

EVALUATION OF SCHOOL COUNSELORS

(A position statement of the American School Counselor Association, March 1978.)

Since the primary purpose of the evaluation process is to assure the continued professional growth of school counselors, the American School Counselor Association is committed to the continued improvement of this process. It is the organization's position that evaluations must be based on specific facts and comprehensive evaluation criteria which conform to local and state regulations.

Because of the American School Counselor Association's commitment to the improvement of school counseling services, the Association welcomes the opportunity to aid local administrators, department heads, and others charged with the improvement and/or development of evaluation instruments and procedures.

ASCA Position Statements

DEVELOPMENTAL GUIDANCE

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

Introduction

During recent years a number of counselor educators and school counselors have advanced the proposition that counseling can and should become more proactive and preventative in its focus and more developmental in its content and process. Viewed in the context of an evolving societal emphasis upon personal growth and an expanding professional expertise, developmental guidance has resulted in a potentially dynamic and promising approach to the helping relationship of the school counselor. The concept of developmental guidance has been discussed under various rubrics, such as (deliberate) psychological education, human relations training, and preventative mental health. Developmental guidance is a reaffirmation and actualization of the belief that guidance is for all students and that its purpose is to maximally facilitate personal development.

Definition

Developmental guidance is that component of all guidance efforts which fosters planned intervention within educational and other human development services programs at all points in the human life cycle to vigorously stimulate and actively facilitate the total development of individuals in all areas—personal, social, emotional, career, moral-ethical, cognitive, aesthetic—and to promote the integration of the several components into an individual life-style.

Endorsement

The American School Counselor Association formally endorses, supports, and encourages the incorporation of developmental guidance in the role and function of the school counselor.

Antecedents

In the past the role of the school counselor has suffered from the restrictions of historical precedent, philosophical tradition, financial support, administrative definition, and counselor selection and preparation. Counselor functions have often been limited to crises management, adjustment coordination, vocational guidance, and clerical and quasi-administrative tasks.

Catalysts

Prompted by cultural change, progressive philosophy, advancement of knowledge and methodological improvement in the behavorial sciences, a climate of open public discourse, pressures of educational accountability, institutional economics, and professional survival, the "traditional" work of the school counselor is in need of well-reasoned revision.

Direction

If counseling is viewed humanistically, holistically, and comprehensively — that is developmentally — then the rationale for developmental guidance is clearly defined: Counseling should be habilitative as well as rehabilitative, proactive as well as reactive, preventative as well as remedial, skill-additive as well as problem-reductive, and characterized by outreach as well as availability. Developmental guidance is the summative terminology which connotes this emphasis.

Specifically, then, developmental guidance refers to the process and content of confluent human development as promoted by planned, purposeful, and sequential intervention.

Content

The content of developmental guidance will vary according to the developmental levels, stages, and needs of participants; counselor competence and resources; and other factors. Examples of programs of contemporary interest include the following: human development (theories, stages, tasks, principles); career development (awareness, exploration, selection, employability skills) academic development (achievement motivation, study skills, test preparation, test wiseness), communication skills, interpersonal relations, decision making, values clarification, marriage

and family planning, parent education, moral development, affective education, conflict resolution, leadership training, assertion training, relaxation training, human sexuality, drug education, death education, and situational adjustment and self-management (divorce adjustment, depression management, weight control, behavior modification). This list is not exhaustive.

Intervention

Many means and resources for developmental guidance intervention are available, and counselors should select from among these alternatives according to needs identified in his or her work situation. Examples of means of delivery include: mini-courses, academic release time from designated classes for developmental guidance activities, curricular scheduling of guidance activities, extended hours (after school and evening), and classroom guidance. Examples of techniques and resources include: resource centers and libraries; programmed texts and workbooks; cofacilitation and consultation with teachers, paraprofessionals, peer counselors, and others; counseling and educational kits; curricular aids, media, bibliotherapy, cinematherapy; contracting; and experiential education. Examples of strategies include: direct service delivery, consultation, team teaching, peer counseling, and paraprofessional counseling.

Medium of Delivery

In terms of efficiency, as well as effectiveness, group approaches are the preferred medium of delivery for developmental guidance activities. By definition, "group" refers to a natural or created cluster of individuals, as small in number as two or of unlimited size. The clusters may be identified as families, classrooms and grades, employees, clients, or other composites of persons who come together as a result of shared need or purpose, common attributes, and/or other coincident characteristics.

Competencies

Essential preparation for developmental guidance intervention involves a thorough understanding of human development (descriptive and theoretical); knowledge of counseling theory and practice; competence in counseling techniques and group processes; skill in program development and management; assessment, appraisal, and diagnostic skills based on developmental concepts; practical competence in basic statistics, applied research, and program evaluation methods; and specific knowledge in the area of developmental emphasis. The counselor should be personally effective and comfortable as well as professionally competent in all areas in which developmental guidance intervention is offered.

Developmental guidance specialists, must, at a minimum, be able to effectively deal with questions such as: What are the general characteristics, expectations, tasks, and behaviors of individuals at this state of development? What are this individual's characteristics, expectations, tasks, and behaviors? What can impede the process of development for this individual? What will facilitate the process of development for this individual?

Because the emphasis on developmental guidance is fairly new, counselor educators may need to modify the counselor education curriculum in order to prepare counseling students as proficient developmental interventionists. Because such an approach has often been taught as an ideal rather than as reality, as an attitude instead of a skill, counselor educators may be required to further develop their educative role.

Counseling students should seek to add the skills of developmental guidance intervention to their repertoire—if necessary, through adjuncts and alternatives to the usual counselor education curricula. Practicing counselors whose programs did not include developmental guidance components should seek to acquire the skills of developmental guidance intervention as part of their professional renewal efforts.

The developmental guidance counselor should be involved in a continuing program of professional improvement in developmental guidance expertise and strategies.

Competencies may be acquired, maintained, and improved through a variety of means, for example, graduate study, workshops, institutes and seminars, meetings and programs of professional associations, self-study of journals, contemporary texts and instructional manuals, in-service education, continuing and extended education, internships, and consultation.

Implementation

Implementation strategies for the initiation of developmental guidance will most likely require assertiveness and ingenuity. Many administrators, teachers, other school personnel, students, and parents will be unaccustomed to the concept, intent, and outcome of developmental guidance; therefore, the counselor's competence must be visible; program development and planning thorough; rationale for programs convincing; conduct of procedures professional, and programs measured, evaluated and reported effectively, both formally and informally. Program implementation must be paced so as to minimize institutional resistance and prevent overextension. Although organizational management skills and change agent strategies will prove useful to those initiating developmental guidance programs, the expertise and personhood of the counselor may be the critical element in the implementation of developmental guidance.

Guidelines

There are several general principles which should help insure quality and effectiveness in the implementation of developmental guidance:

1. The program should be systematic, sequential, and comprehensive.
2. The program should be jointly founded upon developmental psychology, educational philosophy, and counseling methodology.
3. Both process and product (of the program itself and the individuals in it) should be stressed.
4. All personal domains — cognitive, affective, behavorial, experiential and environmental — should be emphasized.
5. Programs should emphasize preparation for the future and consolidation of the present.
6. Individualization and transfer of learning should be central to program procedure and method.
7. Evaluation and corrective feedback are essential.

ASCA POSITION STATEMENT ON PEER COUNSELING

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

It is the position of the American School Counselor Association that Peer Counseling Programs enhance the effectiveness of the counseling program by increasing outreach programs and expansion of guidance services. Through proper selection, training, and supervision, peer counseling can be a positive force within the school and community that will meet the needs of a sizable segment of the student body.

Teenagers often communicate their problems to their peers rather than to parents, administrators, or counselors. There exists in every school community a segment of the student population that rejects adult relationships. In our society, peer influence may be the strongest single motivational force in a teenager's life. Peers can be selected and trained by professional counselors in communication and counseling skills through a carefully planned peer counseling program, and produce additional guidance services which otherwise might never have been realized.

Peer Counseling Defined

Peer counseling is defined as a variety of interpersonal helping behaviors assumed by nonprofessionals who undertake a helping role with others. Peer counseling includes one-to-one helping relationships, group leadership, discussion leadership, advisement, tutoring, and all activities of an interpersonal helping or assisting nature. A peer counselor refers to a person who assumes the role of a helping person with contemporaries. The term "peer" denotes a person who shares related values, experiences, life style, and is approximately the same age.

Peer Counseling Roles

Peer counselors can provide a variety of useful and helpful services for schools, depending on the individual school's needs. It should be emphasized that because peer counselors are trained to function in an interpersonal capacity, they should not be used as clerical assistants.

The most obvious role of peer counselors is that of one-to-one counseling. Talking with students about their personal problems, referring peers to other souces of help in the community, giving information about drugs, sex, venereal disease, and helping students with their school problems are some of the types of assistance given by peer counselors on a one-to-one basis.

Peer counselors can be effective in group settings. Their training enables them to be used as group leaders, assistants in counseling groups, teachers of counseling skills to other students in counseling groups, or as communications skills trainers in the classroom. Peer counselors can also help to train new groups of peer counselors.

There are several educational functions that a peer counselor can perform effectively, such as tutoring students in academic areas, serving as readers for nonreaders, and assisting Special Education consultants in working with learning and behaviorially disabled students.

Peer counselors can be helpful in many guidance capacities. They are very effective in greeting new students and their parents and in making them feel welcome. They can be used to help with the registration process by aiding students in the selection of their classes and serving as assistants and runners on Registration Nights. Other guidance functions peer counselors can perform are serving as Career Center helpers, Open House guides, writing the Guidance Newslettter, helping with organizational details of testing, and being responsible for the management of Career Program speakers.

Professional Counselors' Responsibilities in Peer Counseling

The professional counselor must accept the responsibility for adequately meeting the needs of the school population and for writing a peer counseling program designed to meet those needs. The counselor must then accept the additional responsibilities for:

1. Devising a plan for selection of peer counselors which is compatible with the population to be served.
2. Coordinating the leadership of an adequate training program for the peer counselors selected for the program.
3. Planning the professional counselor's time budget so that adequate time is scheduled for work with peer counselors.
4. Constructing a support system through positive, factual, and honest public relations.
5. Providing time for meeting with the peer counseling group on a weekly basis for continued training, supervision, sharing, and personal growth.
6. Continually monitoring and evaluating the training and impact of the program, and instituting any necessary changes to help the program meet the assessed needs of the population it serves.

The professional counselor must constantly serve as a support and a resource person to peer counselors. The counselor must have a broad, reliable awareness of competent resources and support professionals in the community who can and will accept referrals when needed.

The professional counselor should accept responsibility for the design and completion of research on the program. Follow-up studies must be conducted and program effectiveness must be studied in an objective manner. Result should be reported to the population served and to interested professionals; it is the responsibility of the counselor to share information, research, and expertise with other interested counselors.

How Peer Counselors Help The Professional Counselor

After training and with ongoing supervision, peer counselors can work as important members of the guidance team. Peer counselors often are able to help accomplish things that the professional cannot do alone or cannot do as quickly alone. Therefore, peer counselors help increase the services of the counseling center. They are able to serve in an outreach function and be of service to any population that may feel uncomfortable talking with a professional counselor.

The peer counselors may assist peers with a variety of problems as they serve as listeners. While serving as listeners, they are able to help others on a daily basis to stay healthy mentally, or to reduce crisis situations by alerting professional counselors to problems of a serious nature.

As counselors train peer counselors with helping skills, the peer counselor grow as persons and become more functional at a higher level. Peer counselors are also able to see if they want a future occupation in the helping profession. Peer counselors are trained to become more effective adults.

It is imperative that all guidance and counseling departments in the schools plan, initiate, and implement a peer counseling program. Well-trained peer counselors can have a positive effect on students that no one else can provide. Students sometimes relate and accept alternative patterns of behavior from peers who are struggling with similiar feelings and problems. Peer counselors can create a tremendous positive impact on the student population.

ASCA POSITION STATEMENT ON STUDENT RECOGNITION PROGRAMS

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

It is the position of the American School Counselor Association that counselors should endeavor to protect students and their families in accordance with federal law (PL 93-380), and should alert students and parents to be particularly cautious in approving the release of names and addresses of students to "recognition programs."

Counselors are concerned that some recognition programs:

1. Lack educational benefit to selected students.
2. Provide conv nient lists which may be used for noned cational purposes.
3. Exploit stud nts and families when these programs solicit the purchase of certificates, pins, publicatio etc.
4. Use methods of selection which are not clear.
5. May discriminate when some students are selected.

The counselor's position should be to seek administrative support and cooperation in publicizing these concerns so that students and their families will be informed in the release of names and addresses of students.

dering relationships in a commercial world, can hardly be said to have delegated to the landlord an exclusive prerogative of the sovereign. As in Flagg Bros., the statute at issue permits but does not compel creditor self-help.

In enacting the distraint procedures, the state only announced the circumstances under which a private individual may act. When a private person merely takes advantage of a self-help remedy recognized by the state, his actions are not attributable to the state.—Aldisert, J.

—CA 3; Luria Brothers & Co., Inc. v. Allen, 3/15/82.

Mass Media

COURT PROCEEDINGS—

Television station's First Amendment right to gather news is not violated by federal district court order that refused to allow broadcast coverage of lawsuit settlement negotiations, held in federal courthouse pursuant to court order, that were open to nonbroadcast press coverage.

A television station seeks a writ of mandamus requiring a federal district judge to allow television broadcast coverage of negotiations undertaken in a federal courthouse to settle a lawsuit. The suit was filed by five registered voters against the Colorado governor and other state officials and sought to have a three-judge court appointed to formulate a redistricting plan for the state prior to the 1982 congressional election. The case was assigned to the respondent judge, who ordered the governor and members of the legislature to attempt to work out a compromise redistricting plan. When the negotiators reported their lack of progress, they were directed to a jury room and ordered to continue their efforts. Later in the day, negotiations continued in a magistrate's courtroom. The negotiations were unsuccessful and the lawsuit later went to trial. The trial court permitted the press to be present during the negotiations, but denied a request that television cameras be allowed in the meeting rooms, citing Rule 16 of the local rules of practice for the Colorado district courts, which prohibits the use of cameras in the courthouse.

The television station contends that the court's ruling violated its First Amendment right to gather news. The First Amendment does not guarantee the media a constitutional right to televise inside a courthouse, and courts may impose restrictions upon media access to courtrooms and courthouse premises when necessary to protect and facilitate the proper administration of the judicial system. It is not necessary to consider whether application of Rule 16 could, under different circumstances, infringe upon the media's First Amendment rights. It is enough to conclude that it did not do so in this case.

The television station was not denied access to the meetings. Its representative was free to attend, take notes, and disseminate any information obtained. The room in which the initial meeting was held was small and space was limited. Jury trials were taking place elsewhere in the courtroom. Under these circumstances, the potential for disruption of the meeting and other judicial proceedings outweighed any benefit to the television station and the public from a visual presentation of the meeting room.—Seymour, J.

—CA 10; Combined Communications Corp. v. Finesilver, 3/17/82.

PRIVILEGE—

Journalists enjoy qualified common law privilege against disclosure of confidential sources in Washington civil actions, and, if reporter's interest in nondisclosure is supported by need to preserve confidentiality, this privilege can only be overcome by showing that underlying claim is meritorious, that information sought is necessary to such claim, and that reasonable effort has been made to acquire information by other means.

A newspaper defendant in a libel action was ordered by the trial court to answer certain pre-trial interrogatories concerning its confidential sources for the allegedly libelous article. Plaintiff contends that there is no First Amendment privilege against disclosure of confidential sources, and that the creation of any privilege is a matter for the legislature, not the courts.

Even though some states have found a qualified First Amendment privilege and some have not, this is hardly enough to justify venturing onto the uncertain terrain of federal constitutional interpretation if it is not necessary to do so. Where a case is not governed by statute, as is the circumstance here, it is appropriate for a court to apply the common law to determine the outcome of the case.

Testimonial privilege has not been favored in the common law. Four fundamental conditions have been seen as necessary to establish such a privilege: first, the communication must originate in a confidence; second, the element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; third, the relation must be one which in the opinion of the community ought to be fostered; and, fourth, the injury that would be caused by disclosure must be greater than the benefit gained.

The first two conditions are normally present. The third, while perhaps not present in an earlier time, does exist with considerable force today. Given both the complex and diffuse nature of modern society, and the increasing need for journalists to convey information to citizens, this relationship is one which ought to be fostered. As to the fourth condition, the court believes that the injury from failing to establish the privilege would be greater than the benefit to be gained by requiring the testimony in civil litigation.

This qualified privilege can be defeated, if the trial court finds that three standards have been met. First, there must be a showing that the claim is meritorious, that it is not frivolous or brought for the purpose of harassment. Second, the information sought must be necessary or critical to the cause of action or defense pleaded. Third, a reasonable effort must be made to acquire the desired information by other means. Even when the information is critical and necessary to the plaintiff's case, the plaintiff must exhaust reasonably available alternative sources before a reporter can be compelled to disclose. Finally, in addition to considering these standards, the court must also find that the interest of the reporter in nondisclosure is supported by a need to preserve confidentiality. The court should look to how the reporter received the information and whether the source has a reasonable expectation of confidentiality. This requirement is needed to prevent journalists from invoking the protection of their nameless sources when no confidential relationship need be protected.—Dolliver, J.

Concurrence. The holding of this case should be based on the First Amendment, not on the common law. No purpose is served by deciding the case on common law grounds to avoid recognition of the constitutional interests being balanced.—Utter, J.

Dissent. If some kind of shield law for reporters is necessary under present circumstances, it must be created. The legislature, consisting of some 147 members, is better able to determine the need for creating such a shield law than is this court.—Rosellini and Dore, JJ.

—Wash SupCt; Senear v. Daily Journal-American, 3/4/82.

Product Safety and Liability

STRICT LIABILITY—

Manufacturer is strictly liable in Ohio for defectively designed product if product is more dangerous than ordinary consumer would expect or if benefits of challenged design do not outweigh risk inherent in such design.

A punch press operator brought a product liability action against the machine manufacturer after she injured her hand by accidentally activating the press while trying to reposition the foot switch.

Both parties assert that Temple v. Wean United, Inc., 50 OhioSt2d 317 (1977), is dispositive of this case. There the plaintiff, who was injured while operating a punch

0148-8139/82/$00.50

GREATER SITKA BOROUGH SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

MAR 17 1982

P. O. BOX 179 SITKA, ALASKA 99835

March 15, 1982

Louis J. Licari
Acting Superintendent

Terry Stimson
State Senator
Pouch V
Juneau, AK 99811

Dear Senator Stimson:

Thank you for the copy of Senate Bill No. 437. We are sorry that you were not able to be present at our last Alaska School Counselor's Association board meeting to discuss it with us.

The counselors with whom I have conferred all seem to be in strong agreement with this bill, and we certainly lend you our full support.

The only suggestion I would offer is that Section 09.25.320, DEFINITION, a "teacher" be ammended to include not only public school teachers, but private or parochial school teachers as well.

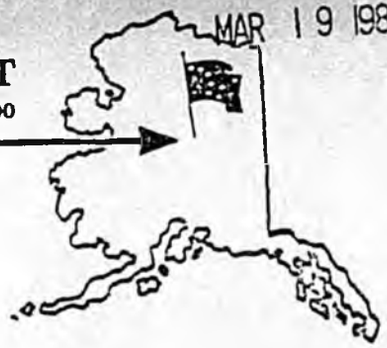
Sincerely yours,

Marvin J. Krause

Marvin J. Krause, Counselor
Sitka High School

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
P.O. Box 1250, Fairbanks, Alaska 99707-1250 (907) 452-2000

KENNETH STEPHEN BURNLEY
Superintendent of Schools



MAR 19 1982

March 16, 1982

Senator Terry Stimson
Pouch V
Juneau, Alaska 99811

Dear Terry,

There has been a very vocal group of parents in Fairbanks who have been concerned that their elementary school aged children will be influenced away from family beliefs. Their main concerns have been the elementary counseling program; however, their concerns have included teachers as well. It became such a public issue in Fairbanks that Fairbanks area legislators may be concerned about the political implications of this legislation at this time. There was no concern in the junior and senior high area. As child abuse is already a mandated non-confidential area you may want to consider addressing your legislation to age twelve and above.

As a professional counselor I support this legislation and am sharing the above information out of concern for your bills' success.

Sincerely,

Paula Esch

Paula Esch, District-Wide Counselor

PE/bg

BOX 1200

MAR 26 198

PH. 262-4478
262-9805

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

PUPIL PERSONNEL SERVICES

Special Services

Counseling

SOLDOTNA, ALASKA 99669

Nursing Services

Media

March 22, 1982

Honorable Terry Stimson, Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Stimson:

Thank you for sending me a copy of Senate Bill 437. I strongly support your contentions in this bill. Hopefully, this piece of legislation will foster more open and frank discussions between students and teachers or counselors.

Sincerely,

Kris Rogers

Kris Rogers,
Director

KR/cbj

cc: School Counselors

SB
473

COMMITTEE REPORT

SENATE

FURTHER: None

5/18/81

Date: _____

Mr. President:

The Committee on JUDICIARY has had SE 473

urban renewal and development projects of municipalities

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 12, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 473 - "An Act relating to municipal powers; and providing for an effective date."

SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."

HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Anderson. Senators Bennett and Parr were absent.

002 - Call to order.

005 - Chairman Rodey brought SB 473 before the committee.

030 - Bill Cummings, Assistant Attorney General, testified against amendment number one by Senator Zeigler, stating it would cause hardships to person's whose property was claimed.

341 - Mr. Sharp, representing the city and municipality of Juneau, also testified against Senator Zeigler's amendments.

490 - Chairman Rodey laid SB 473 on the table.

550 - Chairman Rodey brought HB 194 before the committee.

564 - Mr. Campbell, and Mr. Roman, of the Division of Corrections, testified in favor of HB 194.

630 - Senator Ray objected to the language on Page 2, Line 24.

832 - Senator Rodey offered language change to Page 2, Line 24 and directed staff to prepare language. There was no objection.

845 - HB 194 was laid on the table.

SIDE TWO

012 - Chairman Rodey brought SB 863 before the commi.tee.

022 - After brief discussion, Chairman Rodey returned SB 863 to the file until Wednesday's meeting.

Adjourned at 2:00 P.M. for Senate Session.

A M E N D M E N T #1

Offered in the SENATE By Ziegler

TO: CSSB 473 (Judiciary)

Page 1, line 6:

Delete "municipal powers" and insert "eminent domain"

Page 2, lines 8 - 11:

Delete all material and insert:

* Sec. 3. AS 09.55.440(a) is amended to read:

(a) After the running of the time for a defendant to file an objection to the declaration of taking or after the hearing on an objection to the declaration of taking if the objection is made in the time allowed by law, [UPON THE FILING OF THE DECLARATION OF TAKING] and after the deposit with the court of the amount of the estimated compensation stated in the declaration, the court may order that title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six percent per year on the amount finally awarded that [WHICH] exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 8, 1982

SUBJECT: CSSB 473 (Judiciary)

TO: Senator Robert H. Ziegler Sr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the amendment you requested insuring that filing of a declaration of taking does not result in the immediate vesting of title in the plaintiff. In order to avoid a violation of the single subject rule, this amendment deletes section 3 of the Act relating to urban renewal rather than to eminent domain. That section serves little purpose because AS 18.55.480 - 18.55.960 (Slum Clearance and Redevelopment Act) does not appear to be subject to being construed as limiting the authority of municipalities to undertake other urban renewal projects.

The amendment as drafted provides that title vests only upon order of the court and only after the running of the time to file an objection or after the hearing on an objection if the objection is made in the time allowed by law. Although we discussed establishing a 10 day time period for filing an objection, this approach avoids possible conflicts with the Court Rules. Civil Rule 12 currently provides that an answer be filed in 20 days. The approach in this amendment also conforms with AS 09.55.450 providing that a right of entry may be granted to the plaintiff only after "the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law.

Under existing law although title vests when a declaration of taking and deposit are filed, the right of entry onto the property is not granted until after the plaintiff has time to object. (AS 09.55.450(a)) While no appeal operates to

prevent or delay the vesting of title to property or the right to possession of it, the plaintiff may be divested of title or possession if "the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public goods and the least private injury." (AS 09.55.460) Upon such a finding the court is required to enter the judgment necessary to compensate for the period during with the property was in the possession of the plaintiff, recover for the plaintiff any award paid for the property, and order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking. If restoration is impossible, the court must award damages as compensation for diminution in the value of the property caused by the possession. These provisions may provide adequate protection to a property owner under existing law.

I attempted to confer with you further regarding this amendment and was unable to reach you. Because of the rush, I have prepared it as indicated in this memo. Please contact me if you would like changes made to the amendment.

TBC:csh

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 22, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 845 - "An Act to provide for reinstatement of certain dissolved Alaska Native Claims Settlement Act village corporations to corporate status."

SB 592 - "An Act providing that the parents of delinquent minors and children in need of aid have the right to counsel in certain proceedings under AS 47.10."

SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."

HB 640 - "An Act relating to games of chance and contests of skill; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Chairman Rodey called the meeting to order.

005 - The first item of business, SB 845, was brought before the committee.

015 - James Kohler, Department of Community and Regional Affairs, testified in favor of the bill, stating that several corporations were disolved at no fault of their own.

209 - Mr. Kirkpatrick, Director of Banking Securities Corporations, testified stating neither support nor opposition. He only wanted to see clarification of fees due.

443 - Senator Anderson moved that the bill be passed with individual recommendations. There was no objection and the bill was passed with Senators Anderson, Parr, and Rodey signing do pass, Senator Ray signed no recommendation.

463 - Next Chairman Rodey brought HB 640 before the committee.

470 - Chairman Rodey gave the amendments made to the bill.

552 - Chairman Rodey suggested moving the bill from committee and directed staff to prepare a committee substitute to include the new amendments previously adopted by the committee. There was no objection and the committee subsitute was passed with Senators Parr, Ray, and Anderson signing do pass. Senator Rodey signed no recommendation.

650 - Chairman Rodey brought SB 473 before the committee.

727 - After discussion, Senator Ray moved that the committee substitute be passed with individual recommendations. There was no objection and the bill was passed with Senators Parr, Rodey, and Anderson signing do pass. Senator Ray signed no recommendation.

730 - The last item on the agenda was SB 592.

745 - Francis Still, representing herself, testified in favor of SB 592.

780 - Senator Parr moved that on Page 1, Line 12, the following be deleted: [to transfer custody, or to appoint a person other than the parent of a child as guardian of the child,]. There was no objection.

795 - Senator Parr moved that the committee pass SB 592 with a committee substitute to be drafted to include the new amendment. There was no objection and the bill was passed with Senator Parr signing do pass. Senators Ray, Rodey, and Anderson signed no recommendation.

802 - Chairman Rodey adjourned the meeting at 2:20 P.M.

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 17, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 573 - "An Act relating to the crime of tampering with a witness."

SB 741 - "An Act relating to child support enforcement."

SB 633 - "An Act relating to work programs for prisoners in state institutions."

SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Ray, and Anderson. Senator Bennett was absent.

010 - Call to order by Chairman Rodey.

012 - Chairman Rodey brings SB 741 before the committee.

014 - Mr. Bruce gave explanation of the committee substitute.

037 - Senator Ray moves to adopt the committee substitute and pass the bill with individual recommendations. There was no objection.

085 - Next Chairman Rodey brought HB 573 before the committee.

100 - Mr. Bruce explains the changes that the committee substitute would make.

126 - Senator Ray moves to adopt the committee substitute and move the bill from committee with individual recommendations. There was no objection.

144 - SB 473 was the next item on the agenda.

152 - Mr. Lee Shark, City Attorney for Juneau, testified in favor of SB 473, stating it would clear up some confusion that exists in present law.

367 - Palmer McCarter, representing the Department of Community and Regional Affairs, testified in favor of the bill.

401 - Pat Anderson, representing the Municipality of Anchorage, testified in favor of SB 473.

526 - After brief discussion, Senator Parr asked that the bill be held in committee until Monday's meeting to enable time to review the bill further. There was no objection.

534 - Chairman Rodey next brought SB 633 before the committee.

540 - Senator Parr gave an overview of the bill.

581 - Mr. Walt Jones, Division of Corrections, testified in favor of SB 633.

The Committee spent considerable time discussing the merits of work programs and gratuity payments.

SIDE TWO

177 - Chairman Rodey suggests adopting amendments to SB 633 made by the Department of Health, Education, and Social Services. See attached amendments.

185 - Senator Ray objects to amendment on Page 1, Line 17. Chairman Rodey requested the Division of Corrections to review its fiscal note to insure that no fiscal impact is possible.

287 - SB 633 is laid on the table.

293 - Chairman Rodey adjourned at 2:35 P.M.

CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

STEVEN J. BERGER
ASSISTANT CITY ATTORNEY

Legal Department
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

September 29, 1981

Honorable Patrick M. Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Dear Senator Rodey:

For your information, Mr. Gibson is no longer with the City Attorney's Office and has assumed the position of Area Court Administrator for the Fourth Judicial District. Responding to your invitation for comment to SB 473 relating to municipal powers, I offer the following observations. In reading the opening paragraph of Section 1 of AS 09.55.240(a), the newly proposed paragraph (13), might read a little more fluently as follows:

> (13) authorized power or function performed by a home rule, general law, or unified municipality in accordance with AS 29.73.020.

The proposed amendment to AS 09.55.420(a) seems a good amendment, particularly from a standpoint that it injects a good deal of clarity to its import and makes applicability more uniform. Lastly, with respect to Section 3 of the proposed bill, this language should clear up any doubts which may have been suggested by the original section as to operative limitations, if any, devolving from Sections 480 through 750. I further note that the new subsection is to read as (b), but I cannot find subsection (a) according to my cumulative supplement of October, 1980.

Thank you for bringing this matter to our attention and requesting our response.

Sincerely,

Herb Kuss

Herbert P. Kuss
Acting City Attorney

HPK:bjw cc: W.C. Droz

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 7, 1981

Senator Donald Gilman, Chairman
Senate Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 473

Dear Senator Gilman:

Thank you for taking the time to meet with me during my recent visit to Juneau. As I mentioned during our meeting, the Municipality of Anchorage strongly supports efforts, such as SB 473, to eliminate ambiguities concerning the ability of municipalities to utilize eminent domain proceedings in the exercise of duly authorized municipal powers and duties.

As you know, AS 29.73.020 presently provides that a home rule or general law municipality may exercise the powers of eminent domain and declaration of taking "...in the performance of an authorized power or function of the municipality in accordance with AS 09.55.250-.460." However, AS 09.55.240 dealing with eminent domain and entitled "uses for which authorized" does not expressly cross-reference AS 29.73.020; although the section does refer to cities, boroughs and "municipal divisions".

My legal staff has researched this and other conflicting language in AS 09.55, and we believe that a serious potential for dispute exists due to a failure to clearly cross-reference AS 29.73.020 and AS 09.55.240 and 09.55.420 Although this may appear to be a very minor technical concern, I know you can appreciate the problems that can be caused by needless litigation and delay due to the presently confusing statutory language. This concern is, in my opinion, made much more serious by the fact that local capital improvement construction has grown enormously in recent years, thanks to increased state funding. Often, major local improvement projects such as roads, sewers, public buildings and other projects may involve the use of eminent domain, and it is

important that these projects not run the risk of delay due to litigation over inconsistent statutory language.

The Municipality additionally supports language clarifying our present ability to utilize eminent domain to encourage economic development and redevelopment efforts. Presently, AS 09.55.420 refers to the use of that statute for "...slum clearance purposes or use granted to cities of the first class...." The term "slum clearance" is rather vague as is the reference to first class cities since AS 29.73.020 grants the power of eminent domain for all authorized municipal powers and functions. The Municipality would therefore support referencing "economic development or redevelopment in AS 09.55.420(a) and replacing the present reference to first class cities with a cross-reference to AS 29.73.020.

Finally, the Municipality supports language presently in Section 2 of SB 473 to clarify the fact that the state's urban renewal statutes do not limit municipalities from pursuing their own urban improvement or urban redevelopment programs.

Again, thank you for your time and attention on this matter. If I can answer any questions concerning the above, please contact my office at 264-4236.

Very truly yours,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
cc: Senator Colletta
Senator Sturgulewski

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

October 28, 1981

Senator Patrick Rodey
Senate Committee on Judiciary
Alaska State Legislature
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Re: SB 473 (Eminent Domain; Declaration of Taking)

Dear Chairman Rodey:

Thank you for your letter under date September 23, 1981, requesting our comments and observations regarding SB 473 relating to including municipalities within the same declaration of taking provisions as currently enjoyed by the State of Alaska.

Please be advised that both the City of Ketchikan, a home rule, chartered municipality, and also the Ketchikan Gateway Borough, support SB 473.

Not infrequently a public agency is required to acquire parcels of property, or rights-of-way from several owners in order to proceed with construction of a public project which clearly qualifies as a proper public use and purpose. Many times the agency is successful in negotiating an acceptable price as to most of the property necessary to the project, nowever, is unable to settle as to one or several of the owners.

In such event, under existing law, the State would be authorized to proceed with acquiring possession and proceeding with the project pursuant to the declaration of taking proceedings, subject to the property owner's right to litigate the amount of just compensation to be paid, however, a municipality, even a first class, home rule chartered municipality, such as the City of Ketchikan, may rot be able to proceed under the same situation unless the project could be "pigeon holed" into one of the classes of projects inventoried in existing AS 9.55.420.

Such inability could, and in many cases does, delay the public project several years until after trial has been conducted and entry of a final judgment of condemnation even though the only issue before the Court is the amount of money to be paid by the acquiring agency.

To delay construction of a public project which is clearly a proper public purpose for which property can be acquired, for several years, with attendant major costs and inflation factors, and also uncertainties, is unrealistic and the current declaration of taking proceedings now applicable to State acquisitions should be similarly available to acquisitions by municipalities.

I would be pleased to participate in a teleconference regarding this bill as scheduled by the committee.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

cc: City Manager
Borough Manager
Ted Berns, Esq.

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
Attorneys at Law

JOHN C. HUGHES
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KENNETH P. JACOBUS
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JERRY E. MELCHER
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RICHARD D. THALER
CARL J. D. BAUMAN
FRED B. ARVIDSON
ROBERT T. PRICE
*DENNIS M. BUMP
MARY K. HUGHES
FRANK A. PFIFFNER
*RALPH R. BEISTLINE
GORDON J. TANS
R. CRAIG HESSER
ROBERT L. MANLEY
*DORIS R. EHRENS
JAMES M. GORSKI
TIMOTHY R. BYRNES
JAMES M. SEEDORF
BONNIE L. THIE
PAUL J. ERICHSON
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Please reply to: ANCHORAGE

October 26, 1981

Mr. Patrick M. Rodey, Chairman
Alaska Senate Judiciary Committee
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Re: Senate Bill No. 473
Relating to Municipal Declarations of Taking

Dear Pat:

I am writing this letter in response to your letter addressed generally to the City Attorney for the City of Valdez, Alaska, dated September 23, 1981, requesting comments on Senate Bill 473.

Senate Bill No. 473 appears to be a very good bill, in that it allows the declaration of taking procedure to be used equally by the state and the municipalities, except for off-street parking where public notice is required. The broadening of the municipal declaration of taking power to make it essentially coextensive with the power of the state makes good sense, and should minimize confusion and disagreement in that area of law.

With respect to declarations of taking, however, there is one other area in the statutes which has caused trouble to the City of Valdez in the past, and consideration should be given to amending it. AS 09.55.450(a) provides that the right of entry on the property shall not be granted to the condemning authority until after the running of the time for the property owner to file an objection to the declaration of taking, or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. This statute should be amended to allow the right of entry immediately upon the filing of the declaration of taking. Often times, declarations of taking are filed because the condemning authority needs immediate entry on the property to begin the construction of the

public project. This would occur more often with municipalities, than with the state, because many municipalities have a philosophy of trying to negotiate a purchase with the property owner, and resorting to condemnation only at the last minute. Under the presently existing statute, the property owner can file a nonmeritorious or bad faith objection to the declaration of taking, and can prohibit the condemning authority from entering the property for a period of six weeks or more. This can cause the condemning authority to lose a construction season, pay substantial penalties to the contractor, or make some sort of unwarranted payment to, or agreement with, the property owner. This actually happened to the City of Valdez during the acquisition of the property necessary for the city's new container terminal facility.

If municipalities and the state resort to the condemnation procedure immediately, substantially in advance of the actual construction of the project, no real problem occurs. If the municipality attempts to negotiate reasonably with the property owner, however, it can and does get into a position where it can be blackmailed by the property owner because the municipality cannot obtain the right of entry onto the property. In order to encourage reasonable negotiations regarding the property acquisition, and yet still protect the right of a municipality to start the construction on its projects, AS 09.55.450(a) should be amended to allow the right of entry to be granted to the condemning authority immediately upon its filing of the declaration of taking.

Thank you very much for your consideration of this suggestion.

Very truly yours,

HUGHES, THORSNESS, GANTZ, POWELL & BRUNDIN
Attorneys for the City of Valdez

By: Kenneth P. Jacobus

KPJ.sdl

cc: Mark Lewis

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

601 West Fifth, Suite 315
Anchorage, Alaska 99501
274-1042

Pouch V
State Capitol
Juneau, Alaska 99811

September 23, 1981

Mr. Burton Biss
City Attorney
P.O. Box 1368
Palmer, Alaska 99645

Dear Mr. Biss:

As you may be aware, the Senate Rules Committee has introduced SB473, "An Act relating to municipal powers; and providing for an effective date." The bill is currently in the Senate Judiciary Committee for consideration.

I would appreciate your reviewing the attached legislation for comments and suggestions. If you would be interested in offering testimony on the bill next session, please indicate so in your reply and I will arrange for a tele-conference hearing.

Thank you in advance for your cooperation and assistance.

Sincerely,

Patrick Rodey

Patrick M. Rodey
Chairman

PMR/ds

Sept 30 '81

Dear Senator,
We have no objection to the proposed bill. Thank you.
Yours,

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 23, 1981

SUBJECT: Urban renewal and redevelopment projects of municipalities (Work Order Number 1576)

TO: Senator Tim Kelly
Chairman, Senate Rules Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

You have asked for a section-by-section analysis of SB 473.

Sec. 1 amends AS 09.55.240, listing the uses for which the right of eminent domain may be exercised. A new use is added to allow a municipality which has the power to provide for urban renewal and development to exercise the right of eminent domain in order to carry out urban renewal and development projects. Under AS 29.73.020, a home rule or general law municipality may exercise the powers of eminent domain in the performance of an authorized power or function of the municipality. The power must be exercised in accordance with AS 09.55.250 - 09.55.460, but the list of uses for which the power of eminent domain may be exercised contained in AS 09.55.240 is not included as a limitation on the exercise of eminent domain by a municipality. The amendment contained in Sec. 1 of this bill is probably not necessary since a municipality with the power to provide for urban renewal and development may, under AS 29.73.020, exercise the power of eminent domain in to carry out those projects.

Sec. 2 provides that the Slum Clearance and Redevelopment Act may not be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects. In view of the specific grant of authority contained in Title 29 which permits municipalities to adopt building codes, engage in planning and zoning, and allows home rule municipalities to exercise any power not prohibited by law, the Slum Clearance and

Redevelopment Act is not likely to be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects in the absence of this provision.

Sec. 3 of the bill provides for an immediate effective date.

TBC:ljb

Dear Commissioners:

Revisions should Title 29

Be in

Limit Eminent Domain, Special Utility Taxation

not Benefit to Owner,

Lee Sharp:

The Standard for Eminent Domain is the greatest public benefit

with the least personal Harm.

SB
485

COMMITTEE REPORT

SENATE

5/11/81

FURTHER: None

Date: Jan. 27,

Mr. President:

The Committee on JUDICIARY has had SB 485

permitting the videotaping of testimony of young victims of sexual assault or sexual abuse of a minor

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 485 [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

FILE

The view that children's testimony is not to be trusted in the courts may be an adult prejudice. In fact, studies show that they can recall events accurately enough to testify—if they are not confused by adults.

On a December day in 1976, nine-year-old Todd Bolin came running out of his house in a suburb of Columbus, Ohio, screaming, "My mother's trying to kill everybody." His playmate, a neighbor, watched as the boy's mother emerged and took Todd back inside. Then, the playmate heard two shots and a scream.

The playmate went to tell his mother, who, according to the police, did not believe him. Only later did the boy's father call the police. By that time Todd's sister had returned to the Bolin home to find the bodies of three family members. The mother was still there, reloading her gun. The girl narrowly escaped.

Adults often have a hard time determining the credibility of children. Small children in particular are known for their vivid imaginations, suggestibility, and willingness to stretch the truth; indeed, some psychologists argue that children remember events differently than adults do. The problem becomes a serious one in courts of law where children are called on to testify about events as consequential as murder, kidnapping, and assault.

Statistics gathered by the Department of Justice reveal that 21 percent of robberies and 24 percent of assaults in America occur in or near the home, where a child may be present. In major metropolitan areas, much of the crime is committed by juveniles, which means that the accused and their friends must often testify in juvenile or regular courts. Many lawyers and judges say that, with the expanding consciousness of children's rights in the United States, more cases of child abuse and sexual molestation are being prosecuted, which sometimes requires testimony by the young victim.

Judge Charles Stafford of the Washington State Supreme Court told us recently: "I believe the judicial system is beginning to see more cases in which children serve as witnesses because children are more sophisticated these days. While the rules of evidence concerning admission of children's testimony have not changed, the attitude of the court has. Consequently children seem to meet the test of competency at a younger age."

We have concluded from our own studies and those of others that children can be excellent witnesses—if conditions in the courtroom are as supportive as those in a laboratory, if parents do not impose their own views on their children's statements, and if lawyers did not ask them leading questions on the stand. Laboratory studies, moreover, suggest that jurors do not discount their testimony and, indeed, may give it as much weight as an adult's.

But courtroom procedures are not generally kind to the child witness. Typically, he or she is questioned over and over by parents and authorities both on and off the stand. Months, if not years, elapse between the event in question and testimony about it. Once in court, laws concerning testimony differ for adults and children. Perhaps the most amazing difference in legal procedure for adult and child witnesses is the freedom lawyers have to ask them leading questions. This is particularly surprising in view of children's presumed suggestibility.

That children are highly suggestible, that their memories can be easily manipulated, is supported by studies that go as far back as the turn of the century. A Belgian, J. Varendonck, one of the first psychologists to serve as an expert witness in a court, carried out a number of ingenious experiments using child witnesses that are regarded as classics in the field.

Varendonck had been called on to testify in one of a series of murders of young children that had beset the Belgian hamlet of Petit Gand (much like the recent chain of killings of young blacks in Atlanta). One of the victims in the case had been playing with two friends, ages 8 and 10, but had left them to go home shortly before the murder took place; her body was found the next day. When first questioned, the victim's playmates stated that they had not seen her after she

Photograph by Bill Binzen

"We're seeing more children as witnesses," says one judge, "because children are more sophisticated these days."

had left for home and so could not describe the murderer. Town officials interrogated them repeatedly, asking them questions like, "You certainly know the assassin; tell me who it was."

Eventually, the girls reluctantly made statements that, along with circumstantial evidence, led to the arrest of the father of one of the young witnesses. Varendonck's task as an expert witness was to testify about the credibility of a child witness under these circumstances, a crucial bit of testimony since the town was hysterical and the jury ready to convict. Before testifying, Varendonck went to the playground of an elementary school while the children were lining up for classes in the morning. Later, he talked to 22 pupils, all eight years old, who had been in line. "When you were standing in line in the yard, a man came up to me, didn't he?" he asked the whole group. "You surely saw who it was. Write his name on your paper." Seven of the 22 pupils wrote down a name. The experimenter then asked, "Was it not Mr. M———?": 17 of the 22 pupils now answered "Yes." In front of a panel of lawyers, these children were individually questioned, each gave full descriptions of the man's appearance, attire, and so on.

Actually, no one had approached Varendonck on the playground. When the results of this and other related experiments were presented at trial, the jurors became convinced of the children's suggestibility, and the defendant was acquitted.

Many other studies support the view that children are quite suggestible, but the most recent experiment found no sign of differences between the suggestibility of adults and children. Indeed Barbara Marin, Deborah Holmes, and several colleagues at Loyola University of Chicago reported in 1979 on a study that showed, surprisingly, children were less likely to make an inaccurate statement than were their adult counterparts.

Marin and Holmes asked a group of 96 children, adolescents, and adults to join an experimenter in a room, one at a time, for a psychological test. The conversation was interrupted by a man, an accomplice in the study, who entered the room and started an argument with the experimenter, claiming that the room had been assigned for his use at that hour.

When asked to recount the event later on, adults and adolescents described it in more detail than did the children. In fact, the youngest children (five-year-olds) could say only one or two things about the argument, which may account for their greater accuracy: since they reported only a few details of what had happened, they were likely to state the most obvious facts and to avoid making too many mistakes.

Children typically describe events incompletely, particularly when an event is not well understood. Yet when asked specific questions about the event, they often recall it quite well. Marin and Holmes asked their subjects specific questions about the man, such as "Did the man have a mustache?" or "Did the man knock before he came in?" Even the five-year-olds answered the questions as accurately as the adults. Another surprising finding was that children and adults, when presented with a photo lineup, identified the man who started the argument with equal accuracy.

The results of the Marin-Holmes study agree well with experiments that test children's memories for everyday actions like reading a book or writing a letter. One of us, Gail Goodman, has conducted several studies in which children and adults have viewed pictures of people doing these things. When later asked to describe the pictures in their own words, children recall fewer actions and details than do adults. But, like the adults, they can answer specific questions about the pictures. And they can point accurately to activities they have observed previously, even when the pose or the background is varied. For example, the experimenters showed children a picture of a person reading a book; then the children saw a second picture of the same person reading a book but sitting in a different position in a different room, and a third picture of the same person writing a letter. The majority were able to point to the second picture as portraying the same activity they had seen in the first. Nine-year-olds are actually more accurate than adults in recognizing details in the pictures.

Even if children do occasionally distort the truth, can we be sure that adult witnesses are any more reliable? Elizabeth Loftus, a psychologist at the University of Washington, has conducted numerous experiments in which misleading information suggested to adults was incorporated into their memory. Immediately after adults viewed pictures of a car-pedestrian accident, for example, they were asked a number of questions, including one that subtly introduced the idea that the car had been stopped at a yield sign. Actually, a stop sign had been pictured. Adults who had been exposed to the misleading information were much more likely to remember the presence of a yield sign than were adults who had not. According to Loftus: "We have altered people's memory. We can get people to tell us that red lights are green, that curly hair is straight, that barns exist where there are none. These results and many more like them have led me

In a recent study, children recalled fewer details of an event than did adults—but made fewer inaccurate statements.

and others to believe that adult memory is easy to manipulate."

Robert Buckhout of Brooklyn College of the City University of New York, another leader in the field of eyewitness testimony, has demonstrated how few adults can be considered reliable witnesses. During a TV special on eyewitness testimony, Buckhout staged a purse-snatching incident that appeared to be happening live on the set. Afterward, the station admitted it was an experiment and aired a lineup of six men as "suspects" in the theft. Viewers were asked to call the station to identify the assailant (or to indicate that he was not in the lineup). Of the nearly 2,000 people who called, only 14 percent identified the correct man, about the same percentage that could be expected if the viewers had merely been guessing.

Given that the accuracy of an adult's testimony can be so poor, more studies are needed to determine if, under normal courtroom conditions, children's testimony is any worse. As a practical matter, however, it is up to judges and jurors to decide in individual cases whether a child's testimony is to be believed.

In one highly publicized trial this year, a 12-member jury clearly did not believe a child witness. An eight-year-old girl in Jacksonville, Florida, testified that she had been sexually molested by Marine Private Robert Garwood after he took her out for an ice cream cone. The jury acquitted Garwood, who said that he had not been present in Jacksonville at the time of the alleged assault. The case received nationwide attention because Garwood had earlier been convicted by a military court of collaborating with the enemy in Vietnam.

But in another celebrated case this year, the testimony of a 14-year-old girl contributed to a first-degree murder conviction in Denver. Lewis Roger Moore was on trial for killing and dismembering a roommate, William Kidd, Jr. While admitting he had dismembered the body, Moore's attorneys suggested the victim had died of natural causes. The only evidence that Moore had contemplated murder was given by a neighbor who was 12 at the time of the incident and testified at the trial that she had overheard him warn the victim, "You better leave my old lady alone, or one of these days you're going to get killed."

Key witness: Timmy White, only six, helped to convict a man who had abducted him in 1980. The case was tried in an Alameda County, California, court.

Under our legal tradition, children have never been automatically barred from testifying in the courts. As early as 1778, courts in England proclaimed there was no precise age below which a child should be considered incompetent to serve as a witness. Then, as now, the decision to let a child take the stand was made in each case. In current U.S. practice, children under 14 years (10 years in some states) are interviewed by a judge and one or both attorneys to determine whether they possess a "reliable memory," are able to recount events, know the difference between truth and falsehood and that lying is morally wrong. Usually the interview takes place with the jury absent, and the judge then decides whether the child is competent to testify.

Very young children have on occasion been allowed to take the stand. In California last June, a six-year-old, Timmy White (photo at left), testified in the trial of a man accused of abducting him the previous year, Kenneth Parnell. The defense claimed police had unduly influenced the boy when they put him under hypnosis in an attempt to identify a second kidnapper. But the jury believed the child, and Parnell was convicted.

Decisions on the validity of a child's statements are made at several points in the legal process. When an incident is first reported, a police officer must decide whether to make a child's statements part of the official record. If a case goes to trial, a lawyer must decide whether to take the risk of putting a child on the stand. Once a child testifies, the judge or jury must decide what weight to give that testimony.

Our own research at the University of Denver suggests that children's testimony can be, under some circum-

Photograph by Wide World Photos

If children distort facts at times, are adults any better? Experiments show adult memory, too, can be changed by suggestion.

stances, as influential as an adult's. We first asked 48 subjects to read a description of the trial of John Sander (a fictional name) on negligent homicide charges. Sander was driving home from work when his car hit and killed a pedestrian. At the trial, several witnesses provided circumstantial evidence. For example, a fellow office worker recounted how Sander had been upset and distracted by marital problems the day of the accident. Then, about halfway through the trial, the only eyewitness to the event took the stand and provided crucial testimony. The mock jurors read that the eyewitness had claimed Sander "ran the red light" before hitting the pedestrian, who was crossing the street.

We gave three different versions of the trial description to the mock jurors. Some read that the eyewitness was six years old, others that the eyewitness was 10 years old, and still others that the eyewitness was 30 years old. In every other way, descriptions of the eyewitness were identical (the sex of the person was not specified). Finally, we asked each juror, individually, to gauge the guilt of the accused on a scale from one to seven, with seven being the most guilty.

John Sander was found just as guilty of negligent homicide, on the average, when a child provided the crucial testimony as when an adult did. The credibility of children was further substantiated when we changed the eyewitnesses' testimony to suggest that the defendant was really innocent. Another 48 mock jurors now read that the eyewitness had testified that the pedestrian "darted out in front of the car." While, as expected, the defendant was found less guilty, overall, than in the first, "red-light," condition, the estimation of guilt in this second trial again did not depend on the age of the eyewitness. The children's statements clearly influenced jurors' decisions as much as those of older witnesses.

Lawyers who hope to put a child on the stand hesitate to empanel jurors who might think children cannot be trusted to tell the truth. During jury selection, they ask potential jurors whether they would believe the statements of a child. If the person says no, he or she is often challenged by the lawyer and not seated on the jury. Our research indicates, however, that such juror statements reflect a conscious theory of the child's ability to testify, not the weight the juror would actually assign to the child's testimony.

We determined the credibility of each witness by asking our mock jurors how much they "relied on and valued" the eyewitness testimony presented in the trial. All of the respondents who read about a 30-year-old eyewitness agreed that the adult was highly credible. The 10-year-old witness received credibility ratings somewhat lower than the adult's. For the six-year-old eyewitness, a clear difference of opinion surfaced. About half of our mock jurors (the believers) claimed that they relied on and valued the child's statements, while the other half (the nonbelievers) claimed they did not. On further questioning, the believers stated that children were basically honest and that a child would have no reason to lie. The nonbelievers distrusted a six-year-old's memory. They felt that a child of tender years was subject to suggestion and distortion. Nevertheless, those same people found the defendant just as guilty whether it was an adult or child that had testified. Despite claims that they had not relied on and valued the child's testimony, the guilt decisions clearly reflected the influence of the children's statements.

In a second experiment we pitted the testimony of an adult eyewitness against that of a child. We discovered that the adult's testimony overshadowed the child's. This effect endured even when the adult witness's view of the car-pedestrian incident had been obstructed. From the two studies we concluded that when the child is the sole eyewitness, his or her statements are influential. But when given a choice between believing a child or an adult, jurors disregard the testimony of the child. In real cases this bias could be disastrous for any attorney using a child witness, whether for prosecution or defense.

Our findings are provocative, but the experiments are admittedly somewhat artificial. The mock jurors read a description of a trial but did not actually see a young, bewildered child groping to answer an intimidating attorney's leading questions. In fact, the actual performance of children on the stand is quite variable. Even after hours of preparation, it is never certain how a child will react in a court. Thus lawyers hesitate to call a child witness. The risk is that they will lose substantial ground, if not the whole case, solely on the basis of the child's performance. The gain occurs if jurors sympathize with the child.

In a *Washington Law Review* article, Judge Stafford cited a case in which a prominent citizen was charged with sexually molesting three young boys. The prosecuting attorney at first censored the story related by two of the young witnesses. Since the jury seemed unconvinced of the citizen's guilt, the prosecutor decided to let the third boy tell the story in his own words. According to Stafford, "The jury's reaction was almost electric. The facts were so sordid and disgusting in the uncensored version that one of the jurors almost became ill. The tide of the trial turned. . . ." On the other

hand, if the child had become confused or been discredited during questioning, the case might have been lost.

Of course, the risk of psychological trauma to the witness from such testimony must be a major consideration in deciding whether to put a child on the stand. It is commonly assumed that any courtroom appearance that requires reliving traumatic events, cross-examination, and the presence of strangers will be emotionally upsetting to a child. In divorce and child-custody cases, children are rarely allowed to testify for this reason (they are usually questioned privately, by the judge, in chambers).

We asked Judge Orrelle Weeks of Denver Juvenile Court whether she had observed situations in her courtroom that she considered risky to a child's emotional well-being. "The only time that children seem to be traumatized by serving as witnesses is when they have to recount in detail foul events to which they themselves have been the victim," she replied. "This is most pronounced for cases involving sexual molestation. Often the law requires that the specifics of the sexual act must be stated. We try to be as gentle and understanding as possible. If the child is testifying about an event that is not so personal, the child does not seem to be adversely affected by the experience."

The young witness's reaction will depend in large part on the attitudes of parents, judges, and attorneys. Parental anxieties are easily transmitted to children. Curbing these anxieties will relieve the child of undue pressure. As strangers to the child, judges and attorneys must take the time to establish rapport with the young witness and then gear their questions to his or her level of understanding. Too often during the trial, lawyers stop at nothing to win a case, and judges hesitate to interfere. What can result is a situation familiar to women in rape cases: the witness is put on trial instead of the defendant.

To protect child witnesses, some experts would like to see them represented by their own attorneys. This point is particularly well taken in cases of children who are victims of sexual molestation or other abuse, since one or both parents may be hostile to them if they do take the stand.

Without some form of emotional and legal support, the child's welfare may be sacrificed to the judicial battle.

Even when child witnesses are not victims of crime but only innocent bystanders, they should be well prepared for court procedure before taking the stand. Visiting an empty courtroom, rehearsing questions, and learning the role of court officials helps ease the possible tensions of a court appearance. It is also likely to improve the quality of the child's testimony.

Sometimes attorneys must weigh the potential trauma to the witness against the likelihood that an alleged criminal will go free—or that a child will remain in an abusive situation and cannot be protected by the courts. According to Donald Bross, counsel for the National Center for the Prevention and Treatment of Child Abuse and Neglect, many cases are abandoned at an early stage for fear of damaging the child psychologically. "The issue of children's testimony can become a pretext for not pursuing a case," Bross says. "When the case is an emotionally difficult one, such as child abuse, attorneys may fail to develop other evidence that might make the child's testimony unnecessary."

Many questions about children's testimony remain unanswered. How does a child's understanding of the judicial system affect performance on the stand? What types of questions best elicit a valid answer from a child? Is a child witness likely to be accurate about some kinds of events but not about others? Whatever the answers to such questions, it seems probable that more and more children will be allowed to testify in future cases. Given our present knowledge, we have no reason to believe that their testimony is not as valid and fair to the defendant as other kinds of courtroom evidence that must be weighed by judges and juries. Judge Stafford sums it up: "We need to know more about how children view and describe their world. . . . I have a sneaking suspicion that in some cases children are more accurate witnesses than adults."

Gail S. Goodman, a developmental psychologist, is a research associate and lecturer at the University of Denver. She has published a number of articles on children's cognition and memory. Joseph A. Michelli is a special investigator for the 10th Judicial District Court of the State of Colorado, who has worked on many criminal cases involving child victims.