

IN THE SUPREME COURT FOR THE STATE OF ALASKA

MOLLY HOOTCH, et al.,

Appellants,

vs.

ALASKA STATE-OPERATED
SCHOOL SYSTEM, et al.,

Appellees.

Supreme Court No. 2157

BRIEF AMICUS CURIAE, THE ALASKA CHAPTER OF THE
AMERICAN PSYCHIATRIC ASSOCIATION, THE ALASKA STATE MEDICAL
ASSOCIATION, THE ALASKA CHAPTER OF THE AMERICAN ACADEMY
OF PEDIATRICS

R. COLLIN MIDDLETON
ROBERT H. WAGSTAFF
Counsel for Amicus Curiae

Filed this 31st day of May, 1974
in the Supreme Court for the State
of Alaska

JOSEPHINE M. McPHERES, Clerk

By:

Shari L. Heath
Deputy Clerk

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The Constitutional and statutory provisions relied on are set forth in the text of the brief and in Appellants' brief.

JURISDICTIONAL STATEMENT

Amicus Curiae agrees with the jurisdictional statement of appellants.

STATEMENT OF THE CASE

Amicus Curiae agrees with the statement of the case as presented by the appellants. For the purpose of this brief Amicus Curiae uses only so much of that statement as indicates that a number of secondary school aged children in Alaska are denied access to secondary school facilities in their place of residence, and, if they wish to pursue a secondary education must travel to and live in towns a long way from their homes and families.

QUESTION PRESENTED FOR REVIEW IN THIS BRIEF

Amicus Curiae, by leave of this Court granted on May 2, 1974, were allowed to brief the following:

Should and do, as a medical necessity, the statutes and regulations of the State of Alaska and the Constitutions of Alaska and the United States grant children of Alaska the right to secondary education in the area where they reside?

SUMMARY OF ARGUMENT

Adolescence is a psychodynamically important phase of a person's life where successful maturity is dependent on the successful resolution of this stage of life. Erikson, Identity Youth and Crisis (1968). This cannot be accomplished without significant parental help. Goldstein, Freud and Solnit, Beyond the Best Interests of the Child (1973); Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15 (1972). Appellees' present programs away from

none are destructive of adolescent resolution. Kleinfeld, A Long Way From Home (1973) in appendix.

Appellants have a constitutional right to education, (Breese v. Smith, 501 P.2d 159 (Alaska 1972)) as well as a constitutional right to life, liberty and the pursuit of happiness (*id.*). Appellants' twin constitutional rights are in conflict, and they cannot be required to yield one in order to exercise the other. Simmons v. United States, 390 U.S. 377, 19 L.Ed.2d 1247 (1968). Thus, to insure appellants' right to education consonant with their emotional and maturational health, the Superior Court ruling must be reversed.

ARGUMENT

I.

INTRODUCTION

In his autobiography, Go East Young Man, Justice Douglas discusses his attempt as a professor of law at Yale to bring other disciplines to bear on the education of law students. His attempts there failed.

My years at Yale disillusioned me concerning the law as an instrument of power for the social good.

Years later Hutchins (Dean of Yale Law School similarly disillusioned, founder of the Institute of Human Relations and later Dean of the Law School at the University of Chicago) put the early concept for which we had worked in eloquent language: "If we see the university as a center of independent thought and criticism and the law as an ordinance of reason directed to the common good,

we understand how the two come together and how the one requires the other. The intellectual community has to think together about important matters: the law is the application of thought to what is perhaps the most important of all matters, the regulation and direction of the common life. Law teaches us how to lead the common life and disseminates newly discovered moral truths.

"The law becomes a university subject, as distinguished from one appropriate to a multiversity, when it is seen not as a collection of coercive rules to be manipulated by the technician, but as a body of principles of the highest moral and pedagogical value. The task of the university law school is the clarification and refinement of these principles, which are relevant to the life and to the study of everybody inside and outside the university. Since law is architectonic, which means that it shapes the conduct of society, everything in the society is relevant to it."

Douglas, On East Young Man 170 (1974). Whatever the eventual multidisciplinary approaches to law in the nation's schools of law, courts have increasingly turned to "everything in society" as relevant to determining issues before them. The Supreme Court in Brown v. Board of Education, 347 U.S. 483, 98 L.Ed. 873 (1954) turned in an extensive footnote to psychological studies for the proposition that segregation retards the educational and mental development of blacks. In this state this Court has increasingly turned to sources outside the traditional law to find answers relevant to propositions before it. See, e.g., Pulakis v. State, 476 P.2d 474 (Alaska 1970) (statistical analysis to determine reliability of lie detectors); R.L.R. v. State, 487 P.2d 27 (Alaska 1971) (studies to refute the social theories that secrecy was important in children's cases); and Schule

v. State, 512 P.2d 907 (Alaska 1973) (psychiatric texts to show the necessity for a different test of insanity).

It is the intention of the Alaska Chapters of the American Psychiatric Association and the American Academy of Pediatrics and the Alaska State Medical Association to present as "friends of the court" the relevant psychiatric and medical information for this court in the present case. It is a case dealing with adolescents taken from their homes; specifically it deals with Alaska natives placed in boarding homes or in dormitories away from their families, and much psychiatric literature has been devoted in general to this issue. As shown in the extensive appendix to this brief much is known about the specific question appellants bring before this Court for decision.

II.

IT IS MEDICALLY DAMAGING TO SEPARATE ADOLESCENTS FROM THEIR HOMES SPECIFICALLY AS APPELLEES HAVE DONE

In March, 1974, the American Journal of Psychiatry editorialized:

Boarding schools for American Indian Children have been notorious for generations. Over the years, many psychiatrists have joined other physicians and behavioral scientists in calling attention to the damage done to students by these United States government, operated institutions, which have separated 40,000 children from their families and have provided instead a strange, sterile, impersonal environment as a substitute for home. . . . In recent years the hearings of the Special Senate Committee on Indian Education filled four volumes with testimony, by psychiatrists among others, about the plight of Indian students. Much of the

testimony was similar to that collected in the Meriam report (Meriam, Problems of Indian Administration (1928)), compiled many years earlier. There had been little or no improvement in the interim and there is little evidence of any now.

"A Hazard to Mental Health: Indian Boarding Schools", 131 Am. J. Psychiatry, 305 (March 1974). See Krush et al., "Some Thoughts on the Formation of Personality Disorder: Study of an Indian Boarding School Population" 122 Am. J. Psychiatry 868-876 (1966); Bergman, et al., "The Model Dorm: Changing Indian Boarding Schools" read at the 126th annual meeting of the American Psychiatric Association, May 7-11, 1973; Hammerschlag, et al., "Indian Education: A Human Systems Analysis", 130 Am. J. Psychiatry 1098-1102 (1973).

It is well known that adolescence is a period of extreme turmoil, and it is adolescents that are the class appellants represent.

Adolescence proper sets in with puberty, with its rapidly physiological development of the sex organs. The maturation of sexual and reproductive capacities stimulates genital and aetosexual interests and activities in the genital stage of psychosexual development. Sexuality is no longer diffused throughout the body as in the pregenital phases of personality development but becomes localized on the genital organs. The sexual area, however, is only one aspect of the personality in which there is an inherent drive toward maturation.

The growing adolescent is now occupied with how he appears to others and how he perceives himself. He is in search of a personal identity, a sense of self. Since the adolescent stands midway between personal independence and continued dependence on the parents, many acts of emanci-

patery behaviour occur.

Kolb, Noyes' Modern Clinical Psychiatry 47 (7th ed. 1968). In her section of the book, Beyond the Best Interests of the Child (1973), Anna Freud writes:

As a prototype of true human relationship, the psychological child-parent relationship is not wholly positive but has its admixture of negative elements. Both partners bring to it the combination of loving and hostile feelings that characterize the emotional life of all human beings, whether mature or immature. The balance between positive and negative feelings fluctuates during the years. For children, this culminates in the inevitable and potentially constructive struggle with their parents during adolescence.

Goldstein, Freud and Solnit, Beyond the Best Interests of the Child 19 (1973).

So accepted is the analysis that adolescence is a period of intense struggle that such analysis is part of basic textbooks. See Morgan and King Introduction to Psychiatry 471, 480 (1966). However, possibly the best description of the psychodynamics of adolescence is contained in the works of Erik Erikson.

With the establishment of a good initial relationship to the world of skills and tools, and with the advent of puberty, childhood proper comes to an end. Youth begins. But in puberty and adolescence all sameness and continuities relied on earlier are more or less questioned again, because of a rapidity of body growth which equals that of early childhood and because of the new addition of genital maturity. The growing and developing youths, faced with this physiological revolution within them and with tangible adult tasks ahead of them are now primarily concerned with what they feel they are, and with the question of how to connect the roles and skills cultivated earlier with the occupational prototypes of the day. In their search

for a new sense of continuity and sameness, accidents have to refight many of the battles of earlier years, even though to do so they must artificially appoint perfectly well-meaning people to play the role of adversaries; and they are ever ready to install lasting idols and ideals as guardians of a final identity.

The integration now taking place in the form of ego identity is, as pointed out, more than the sum of the childhood identifications. It is the accrued experience of the ego's ability to integrate all identifications with the vicissitudes of the libido, with the aptitudes developed out of endowment, and with the opportunities offered in social roles. The sense of ego identity, then, is the accrued confidence that the inner sameness and continuity prepared in the past are matched by the sameness and continuity of one's meaning for others, as evidenced in the tangible promise of a "career".

Erikson, Childhood and Society 261-262 (2nd ed. 1963). Adolescence is the time of the identity crisis,

... in psychological terms, identity formation employs a process of simultaneous reflection and observation, a process taking place on all levels of mental functioning, by which the individual judges himself in the light of what he perceives to be the way in which others judge him in comparison to themselves and to a typology significant to them; while he judges their way of judging him in the light of how he perceives himself in a comparison to them and to types that have become relevant to him. This process is, luckily, and necessarily, for the most part unconscious except where inner conditions and outer circumstances combine to aggravate a painful, or elated, "identity consciousness."

Erikson, Identity Youth and Crisis 22-23 (1968); see also, Erikson, Young Man

Parther 14 (2nd ed. 1962); Anna Freud, The Ego and the Mechanisms of Defense 177 (1946).

It is obvious then that the adolescents about whom this suit is concerned are in a period of extreme stress when the problems faced in childhood are brought forth again, the search for independence as becomes directly related to parental dependence and the adolescent, no longer a child but far from yet being an adult forges those basic psychological links called a personality and either successfully or unsuccessfully matures. It is against this complex interpersonal and intrapersonal process that the system of transporting adolescents to Bethel, Nome and Anchorage by appellee must be viewed.

How important is it that so difficult a process is forced to occur away from home? The quotes above indicate the answer that it is an awesome difficulty. Anna Freud directs herself to the question, again, in Beyond the Best Interests of the Child.

With adolescents, the superficial observation of their behavior may convey the idea that what they desire is discontinuation of parental relationships rather than their preservation and stability. Nevertheless, this impression is misleading in this simple form. It is true that their revolt against any parental authority is normal developmentally since it is the adolescent's way toward establishing his own independent adult identity. But for a successful outcome it is important that the breaks and disruptions of attachments should come exclusively from his side and not be imposed on him by any form of abandonment or rejection on the psychological parent's part.

Goldstein, et al., Beyond the Best Interests of the Child, supra at p. 36.¹

How much an impediment is placed in the way of the adolescent process by the present Alaska State Operated Schools programs in Bethel, Nome and Anchorage? Appendix I speaks for itself. It is included in its entirety because no single quotation or group of quotations from the study adequately conveys its full meaning. The total dislocation of these students who remain is evident if by no other evidence than that many if not most students return home rather than complete their education. One conclusion does deserve quotation here.

Costs of High School Programs Away From Home

These programs created serious social and emotional problems among village students without teaching them the skills they need to succeed in adult life.

Social and Emotional Costs. Of the students studied, the high school experience led to school-related social and emotional problems in:

- Seventy-six percent (17 out of 23) of the students in the rural boarding home program
- Seventy-four percent (9 out of 12) of the students in this boarding school
- Fifty-eight percent (23 out of 40) of the students in the urban boarding home program.

¹/ The determination that parents are essential at such a stage in development has been judicially recognized. In Wisconsin v. Yoder, 406 U.S. 205, 232, 32 L.Ed. 2d 15, 35 (1972) the Supreme Court grounded its decision upon the "... primary role of the parents in the upbringing of their children (which) is now established beyond debate as an enduring American tradition."

In village ninth and tenth grade programs, only about 10 percent of the 138 students were reported by teachers to suffer from social and emotional problems, and these problems were rarely school-related.

Withdrawal from School: The majority of the students studied either dropped out of school and received no further education or else transferred from school to school in a nomadic pattern than can create identity problems:

Sixty-nine percent (15 out of 23) withdrew from the rural boarding home program.

Sixty-five percent (26 out of 40) withdrew from the urban boarding home program.

Thirty-eight percent (16 out of 42) withdrew from the boarding school program.

Appendix, p. X.²

Such failures cannot be tolerated in a native culture already the beneficiary of disruption and already showing the signs of increasing emotional illness. In Changing Patterns of Eskimo Homicide, Doctor Joseph Bloom notes the dramatic increase in homicide among Eskimo youth.

The goal of this paper is to begin a focus on Eskimo homicide. Viewing violence in terms of traditional personality dynamics is extremely important. Solutions will only be found if these factors are taken into account. Time and

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The failure of appeal[?] away from home education policy is no greater than that found in the Bureau of Indian Affairs boarding home programs. See Indian Education: A National Tragedy - A National Challenge 1969 Report of the Committee on Labor and Public Welfare, Special Subcommittee on Indian Education VI et seq. "As early as its first hearings in December of 1967, the Senate Subcommittee on Indian Education was made aware of the mental health problems associated with Indian boarding schools."

time again I have seen unsophisticated people push a style of problem solving on eskimos which is entirely counter to eskimo problem solving styles. Since 1966 we have seen a plethora of groups like Vista, ORC and other confrontation oriented groups urge eskimos to stand up and confront, encounter, express, etc. Whether this fit the traditional eskimo style of problem solving was of little interest and it may very well be that these tactics are partially involved in the loosening of cultural restraints to the expression of violence. . . .

Bloom, Changing Patterns of Eskimo Homicide 11-17 (1974) delivered at 127th annual meeting of the American Psychiatric Association (May 1974). Similar works indicate an alarming increase in youthful and adolescent suicide. See Kraus, Suicidal Behavior in Alaska Natives (1970); Changing Patterns of Suicidal Behavior in North Alaskan Eskimos (1971), delivered at Second International Symposium on Circumpolar Health Nordic Council for Arctic Medical Research. As an explanation of the rise in adolescent suicide and adult suicide among eskimos Doctor Kraus notes:

It was also in the decades following World War II that the large scale exportation of adolescents to Bureau of Indian Affairs Boarding Schools was begun. In the traditional era, an individual could expect to spend his entire life in his village. Going out to school involved a physical separation of thousands of miles. In some instances, it was not possible for children to return home even for Christmas. In addition to the physical separation a more subtle loss, the erosion of ethnic identity was experienced. The educational opportunity afforded American Natives

by the United States Government was, as a matter of policy, oriented towards assimilation of the native into the Western culture. The incongruence of Western culture and Eskimo culture has been noted above. In the boarding home situation the eskimo adolescent brought cultural values which stressed the here and now, living in unity with the environment, and good humored cooperation. This sense of self and security was closely bound to his relationships with family members, relationships which he saw as sustaining him through life. In school he was confronted with a value system which was future oriented, stressed environmental mastery and aggressive competition and which placed a high evaluation on renunciation of early libidinal ties and movement towards progressively greater individualism and autonomy. Krash ("Some Thoughts on the Formation of Personality Disorder: Study of an Indian Boarding School Population", 122 Am. J. Psychiatry 868-875 (1966)) has used the term "psychosocial nomadism" to describe the objectless, anomic plight of native children separated from home and attempting to adjust to the Western educational situation.

Krass, Eskimo Suicide 11 12 (1972).

It is this same destructive system which appellates seek to perpetuate. Amicus Curiae urge this Court that they not be allowed to do so. Adolescence is a time of crisis, maturity or chronic immaturity is fixed during this time in every person's life. That determination cannot be fixed in a vacuum a long way from home.

III.

THE CONSTITUTION OF ALASKA REQUIRES REVERSAL OF THE SUMMARY JUDGMENT ENTERED BELOW

Amicus Curiae urge reversal of the Superior Court grant of summary

judgment. Lengthy briefs arguing the law are submitted by appellants and other interested parties. These arguments need not be reproduced here. This Court in Breese v. Smith, 501 P.2d 159 (Alaska 1972) found a Constitutional right to education.

The second relevant provision is Article VII, section 1, which guarantees all children of Alaska a right to public education. This section of Alaska's Constitution provides:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. . . .

Breese v. Smith, *supra* 501 P.2d at p. 167.

In that same case this Court stated:

. . . Article I, section 1 affirms that all persons in the State of Alaska are granted certain inherent and natural rights. More precisely, that section states:

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Breese v. Smith, *supra*, 501 P.2d at pps 166-167. In Breese a child was expelled for having long hair. Long hair was a "liberty" and "students attending public educational institutions in Alaska possess a constitutional right to wear their hair in accordance with their personal tastes." *supra* at 168. In Breese this Court

found a lack of any compelling state interest to abridge the "liberty" so defined. In appellant's case before this Court appellant, unlike the analysis used by this Court in Breese, must choose between the very same constitutional rights enunciated in Breese, the right to education guaranteed by Article VII, Section 1 and the "natural right to life, liberty, (and) the pursuit of happiness. . . ." guaranteed by Article I, section 1. Appellees force each child in the classes appellants represent to choose between education and, as shown above its often disastrous effects away from home, or life, liberty and the pursuit of happiness at home without education.³ An intolerable friction between constitutional guarantees is thus developed.

In Simmons v. United States, 390 U.S. 377, 19 L.Ed.2d 1247 (1968) the Supreme Court reversed a conviction where a defendant's testimony at a suppression hearing that he "owned" evidence he wished suppressed as illegally seized was used as part of the prosecution case against him on the merits. Obviously Fourth Amendment rights were in conflict.

However, the assumption which underlies this reasoning (that the defendant gives up his Fifth Amendment right voluntarily) is that the defendant has a choice: he may refuse to testify and give up the benefit (of the Fourth Amendment right). When this

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This choice is made easier by the relaxation of "compulsory" education, AS 14.30.010(b)(7), for children who seek to return home and do not live within two miles of a school. The relaxation is nothing more than a complete abrogation of the state's duty under Article VII, section 1.

assumption is applied to a situation in which the "benefit" to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created. Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another.

Simmons v. United States, supra, 19 L.Ed. 2d at 3259.

Amicus Curiae find the reasoning applicable to appellants' position. They cannot be forced to choose between constitutional mandates. Education cannot mean education at the price of emotional health, "liberty" or the rights of Article I, section 1, and emotional health cannot be claimed only at the expense of one's constitutional right to education. It is "intolerable that one constitutional right should have to be surrendered in order to assert another." This Court has noted:

. . . The United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles.

Breese v. Smith, supra, 501 P.2d at 169. In so saying this Court must reverse the judgment entered below finding it intolerable that the individual choice, the protection of appellants' minority sentiments or their appreciation for divergent

lifestyle has been restricted by appellees' actions to the simple choice of education and emotional destruction or no education at all.

CONCLUSION

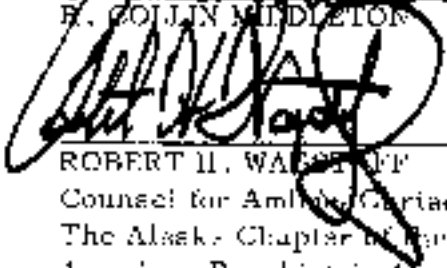
For the reasons cited above amici curiae request this Court reverse the summary judgment entered below.

DATED this 31 day of May, 1974.

Respectfully submitted,



F. COLIN MIDDLETON



ROBERT H. WASSEFF
Counsel for Amicus Curiae
The Alaska Chapter of the
American Psychiatric Association, The Alaska State Medical
Association and The Alaska Chapter
of the American Academy of
Pediatrics