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COUNSELING THE COUNSELORS: LEGAL IMPLICATIONS OF COUNSELING MINORS WITHOUT PARENTAL CONSENT

A fifteen-year-old girl walks into the office of a pregnancy counseling service and informs the social worker on duty that she is pregnant and wishes to obtain an abortion, but has no money and cannot discuss the matter with her parents. A sixteen-year-old boy calls a neighborhood “hotline” telephone number and tells the volunteer who answers the phone that he has a hard drug problem, wants help from someone, but will not permit his parents to know. An eighteen-year-old girl arrives at a family counseling center with a suitcase and a firm resolve never to return home. A thirteen-year-old boy tells a minister in a resort community that he thinks he is a homosexual and wishes to conceal this problem from his parents. The natural and professional instinct of the counselors involved in these situations, all of which do arise, is to provide help of some sort to the client.\(^1\) The counselor, however, may fear legal liability if he should help the child without his parents’ knowledge.\(^2\)

1. Questionnaires were sent to thirty agencies which were thought to have an interest in the subject matter of this discussion. Twelve responses were received. While this is not a sufficient number to support conclusions on a statistical basis, the responses received covered a wide range of types of agencies and included several of the more important agencies involved in youth counseling in Maryland; therefore it seems likely that some measure of the feeling of counselors has been obtained. The agencies which responded included, among others, the Associated Catholic Charities, the Jewish Family and Children’s Service, the Man Alive program (drug addiction), Planned Parenthood, Inc., Lutheran Social Services, Northwest Drug Alert, the Young Women’s Christian Association, and several major college counseling centers. Question 1 was “Do you counsel minors without the consent of their parents?” Ten answered “yes”; one answered “one time only”; and one answered “no.” This indicates that such counseling is being conducted. The questionnaires and all correspondence cited infra are on file in the Maryland Law Review offices.

2. The question of liability might easily arise, although none of those who responded to the questionnaire answered that they had ever been subjected to harassment by law enforcement officials. Eight claimed that they fear possible sanctions because they deal with youthful drug users, and seven stated that they desire further legal protection.

An equally serious problem is the threat of community pressure on counseling agencies. For example, the Harundale Youth Center, a counseling and recreation facility for teenagers located in a shopping center south of Baltimore, was almost forced to close in 1970, when an official of a neighborhood improvement association sought to link the Center with the abduction and murder of a local girl. Police found no connection between the Center and the incident, but the County Executive later refused to approve the Center’s request for federal funds. A year-long campaign by the Center’s staff and board of directors was necessary to overcome the unfavorable publicity and restore the facility’s financial position. Evening Sun (Baltimore), Jan. 31, 1972, § C, at 4, cols. 1-6. The impact of such negative public reaction to an agency’s practices is beyond the scope of this discussion.
The problem of how the law would act upon the relationship between counselor and minor is not settled, nor is it clear how the law would be brought into the situation. The legal and moral ambiguities raise questions of vital importance to agencies, parents and minors.

**Scope of Discussion**

This discussion will center around "counseling," "counseling relationships," and "counseling services," defined to include all services provided to minors by social agencies, and clearly broad enough to include help to the children in the four hypotheticals posed above. The central elements of these services are counseling in the traditional casework framework understood to include proposing solutions to problems experienced by those seeking help, and the entire range of psychotherapeutic activities carried on to remedy emotional difficulties and mental disorders. However, the phrase "counseling services" is intended to include an even broader range of services; for instance, it includes the actual treatment of venereal disease as well as advice about available services and educational programs directed toward avoiding the disease. Prescription of birth control devices and information as to where they may be obtained are included. Methadone treatment and job placement programs are embraced by the term "counseling" as applied to the case of drug abuse.

The discussion will concern individuals between the ages of twelve and twenty-one. While persons outside this age group may also share many of the same problems, those persons over twelve usually feel the effects of adolescence, which may create a special need for counseling; and those under twenty-one experience the problems created by the legal disabilities imposed upon minors. Children under twelve usually do not possess sufficient freedom of action to seek counseling help.

For the most part, "without knowledge" and "without consent" shall be used interchangeably. Counseling without the knowledge of parents necessarily implies counseling without their consent. There are probably few situations which involve counseling with parental

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3. The fact that many persons agree to counsel young people without parental consent seems to reflect a decision on their part that such a practice is a valid means of providing help. However, some feel that family-oriented counseling is a necessity to the solution of problems. One study found that programs of delinquency prevention that have focused upon the family have reported contradictory results. See Rodman & Grams, Juvenile Delinquency and the Family: A Review and Discussion, in TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 188, 207 (President's Commission on Law Enforcement and Administration of Justice ed. 1967). It was stated that "the effectiveness of parent education in altering attitudes and practices has not been clearly demonstrated." Id. at 216. One person responding to the Maryland Law Review's informal questionnaire, Mrs. Shirley Price, Director of Social Services of the Lutheran Social Services of Maryland, Inc., felt that "one of the first goals of counseling [a minor seeking counseling without parental consent] would be planning with him how to involve his parents, who are a significant portion of his reality."

4. Social workers understand the range of services available as a result of their work to be extremely broad. See, e.g., A. FINK, C. ANDERSON & M. CONOVER, THE FIELD OF SOCIAL WORK 6-7 (5th ed. 1968). Social work was defined to be "the art and science of providing services designed to enhance the interpersonal functioning of people, both as individuals and in groups." Id. at 1.
knowledge but without consent, since the parent probably possesses 
the power to halt the relationship if he so desires.\(^5\) The legal problems 
presented by these two situations are sufficiently similar to negate any 
need for a definitional distinction between them.

Finally, the terms "agency" and "counselor" are intended to in-
clude those who provide services for children without the knowledge 
of their parents. These terms will be limited, however, to persons who 
are part of groups which organize to provide counseling help to other 
persons. The discussion applies primarily to voluntary agencies rather 
than governmental bodies. Some of these agencies have reached a 
position of accepted standing, while others are organized relatively 
informally and are of comparatively recent origin.\(^6\) The range of 
services, skills and values encompassed by these agencies is broad, 
but the attribute of counseling children without parental consent is 
an important common factor which justifies their treatment as a group.

THE LEGAL RELATIONSHIP OF PARENT AND CHILD

Persons who deal with children must realize that they are not 
engaged with people who possess all the rights of adult human beings. 
The law does not view children as complete persons equipped with all 
the powers which adults possess.\(^7\) The activities and conduct of persons 
under twenty-one years of age may be restricted to a greater extent 
than may the like activities of adults.\(^8\) These restrictions are ostensibly

\(^5\) See notes 16-50 infra and accompanying text.

\(^6\) Examples of more "respectable" agencies are Associated Catholic Charities, 
Jewish Family and Children's Service, the YWCA, and Planned Parenthood, Inc. 
This does not imply that these organizations are staid, ineffective or inactive. These 
agencies have operated over a number of years, and have offered services which have 
come to be used and accepted by large numbers of people. Agencies such as North-
west Hotline (telephone counseling service) and the People's Free Medical Clinic 
counseling and medical services center) are more recent in origin; they have sprung 
up in response to the needs of youth in recent years. While agencies with relatively 
informal structures are included in this discussion, the scope is not so broad as to 
include every person who helps or counsels a child at one time or another. A doctor 
or a teacher, or even a friend might conceivably provide services which are within 
the definitions. Thus a doctor may recommend or prescribe contraceptives to a girl 
under twenty-one in the course of treatment or may treat a venereal disease problem. 
A teacher will often help or counsel children who come to him with problems unre-
related to classroom matters. However, since agencies are engaged in counseling chil-
dren as their primary occupation, they appear to have the greatest stake in the 
subject matter of this discussion, and would feel the effect of the law to the greatest 
extent. Thus "agency" means a group which is organized for the purpose of pro-
viding counseling services to others.


\(^8\) Thistlewood v. Trial Magistrate, 236 Md. 548, 204 A.2d 688 (1964) (minors 
unsuccessfully challenged constitutionality of a curfew ordinance). Twenty-one is not 
necessarily the age at which the State imposes restrictions. For instance, in Maryland 
no one under twenty-one may purchase or possess alcoholic beverages. Md. ANN. 
Code art. 2B, § 3(a) (1968). The minimum age at which one may purchase deadly 
weapons is eighteen. Id. art. 27, § 406 (1971). Persons under eighteen years of age 
may not operate motor vehicles, except if they are sixteen and have passed a course 
in driver's education. Id. art. 66½, §§ 6-102.2, 6-102.4 (1970). Persons under fifteen 
years of age may not buy tobacco. Id. art. 27, § 404 (1971). Thus for different 
purposes the age of minority may vary. However, all those under twenty-one may 
be restricted. A bill has been introduced in the Maryland House of Delegates to 
reduce the age of majority from twenty-one to eighteen. H.B. 110, Md. Gen. 
Assembly (1972).
imposed for the protection of infants, who lack mature judgment. There is a wide range of restrictions which may be and have been imposed; for example, states may conclude that minors may not watch certain movies, stay on the streets past a certain hour, or be subject to the same procedural rules as adult parties to legal actions. The extent to which infants share the constitutional rights of adults is not clear. In short, the law operates upon the theory that "[m]inority . . . is in itself a recognized badge of incompetency of an infant to handle his own affairs."!

Parents' Power

To secure the protection of minors, the State usually reposes care, custody and control of a child in his parents. American courts view with great favor the rights of a parent with respect to his child, which they term the "natural rights" of the parent. The relationship of parent and child grows out of natural law, and is not created by the law; it is against public policy to destroy or limit the relationship. It is evident that this principle is an attempt to give legal weight to the effect of biology and the natural tie between the parent and his child. Because of his natural rights, the parent has the right to direct the upbringing of his child, and the State generally may not interfere with parental discretion.

Although the State possesses supreme

14. The Supreme Court has held that the Bill of Rights and the fourteenth amendment are not for adults only. In re Gault, 387 U.S. 1 (1967). The Court also recently held that students in public schools enjoy the right to free speech as against state action in the form of unreasonable regulations by school authorities. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969). Constitutional rights may be limited where children are concerned, however. Ginsberg v. New York, 390 U.S. 629 (1968) (right to sell girlie magazines to children). Ginsberg, however, did not concern the constitutional rights of the child himself.

Despite these indications that minors may possess all the constitutional rights of adults, it seems unlikely that the Supreme Court would extend all of the constitutional requirements for trial to juvenile proceedings. The Maryland Court of Appeals has twice stated that it did not find it clear whether children possessed all of the constitutional rights of adults. Thistlewood v. Trial Magistrate, 236 Md. 548, 204 A.2d 688 (1964); Ex parte Cromwell, 232 Md. 305, 192 A.2d 775 (1963). Both of these statements were made prior to Gault. The long history of judicial approval of different treatment for minors and adults has probably established the rationality of classifications based on age, negating the impact of an argument that different treatment constitutes a denial of equal protection of the law.

An important point is that the question of the constitutional rights of minors is not the only issue in considering their legal status, since states may regulate their activities in ways that restrict their independence or mobility without appearing to infringe on constitutional rights. See, e.g., the restrictions placed on minors cited in note 8 supra.

power over the welfare of children, it may not abrogate the right of the parent to custody except where such action is required by the interest of society. The result of this judicial philosophy is that courts usually refuse to interfere with parental rights except in the most extreme situations. In several cases, a high degree of parental misconduct has been overlooked because of the parent's right to have custody and control of his child. In at least one court's eyes, parental misconduct must be either abandonment or moral depravity amounting to abandonment before a parent will be found unfit.

Each party to the parent-child relationship is possessed of rights and duties as a result of his position. Because many parents are sensitive to intrusions upon their interests, the law has long been reluctant to impose a great number of restrictions in this area. There is, therefore, little positive law as to what the obligations are; one writer states that "[p]arental power probably cannot be defined except as a residue of all power not lodged elsewhere by the law." It is said that the parent has the right to custody, care and control of his child, as well as the child's services and earnings. The child is generally held to have a right to shelter, food, clothing, education, support, guidance and protection.

The practical extent of a minor's rights is doubtful, however, largely because he is without means to enforce or protect them. The primary ingredient in this lack of effective remedy is the parent's immunity against suit by the child. While there is no immunity against suit for willful torts, a parent is not liable for excessive

23. See, e.g., In re Rinker, 180 Pa. Super. 20, 117 A.2d 780 (1955) (mother whose husband deserted her was unable to care for children for long periods because in hospital; after release mother was often drunk; mother dated married men who mistreated her and whom children detested; mother not always able to care for children and keep them in school); Sutter v. Yutz, 223 S.W.2d 554 (Tex. Civ. App. 1949) (mother unable to manage finances; subject to great emotional distress due to bad love affairs and attacks of shingles; tied children to bed, lost them, left them in filthy condition).
25. Pound, Individual Interests in the Domestic Relations, 14 MICRO L. REV. 177, 187 (1916). Dean Pound attributed this sensitivity to the fact that the rules, or lack of them, in this area have been long established, many of the rules being from Roman law or having their origins in such nonlegal milieux as religion and mores, and to the problems of practical judicial administration. See notes 29-36 infra and accompanying text.
29. The much criticized immunity, originated in Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891), has been riddled with exceptions. See generally Hinkle, intra-family Litigation — Parent and Child, 1968 Ins. L.J. 133; Kleinfeld, supra note 26, at 426.
punishment unless it was maliciously administered, and it has been said that there is ordinarily no liability for failure to perform parental duties. Parents are afforded wide discretion in the performance of their duties of support and discipline, and are held to no higher standard of care than their own abilities permit. The justification advanced for this doctrine rests upon society's interest in maintaining the family unit in its entirety, which requires the child's obedience.

Another reason that the child is practically unable to enforce his rights is that he lacks legal sophistication. Most children do not know what legal remedies they may possess, and would not be able to gain access to the courts even if they were afforded a wider range of remedial power. Once in court, the child would be faced with the heavy favor with which courts view parental rights.

The child's welfare is thus left largely to the inclinations of the individual parent. There are conditions under which a child may be removed from his home, such as actual physical mistreatment; this, however, provides no sanction against the many possible abuses which fall short of actual battering. A child may also be placed on his own through emancipation; however, there are legal obstacles which may prevent effective use of this doctrine, and ignorance of one's right

32. Id. The case held that there must be such acts as show a complete abandonment of the parental relationship.
34. Wick v. Wick, 192 Wis. 260, 212 N.W. 787 (1927).
35. See Kleinfeld, supra note 26, at 430.
36. See notes 16-24 supra and accompanying text.
37. See, e.g., Md. ANN. CODE art. 27, § 35A (1971) (Maryland's child abuse statute providing for a report to be made by one who discovers injuries resulting from abuse, for investigation and proceedings by the State's Attorney, for possible removal of the child from parental custody, and for criminal penalties for parents who abuse children). See Belgrad, The Problem of the Battered Child, 2 Md. L. Forum 37 (1972).
38. Emancipation means the freeing of a child from the care, custody, and control of his parents. Wurth v. Wurth, 313 S.W.2d 161 (Mo. Ct. App. 1958). It relieves the obligations and extinguishes the immunities between parents and child. Vaupel v. Bellach, 261 Iowa 376, 154 N.W.2d 149 (1967). Emancipation may be accomplished by express consent of the parties, or may be inferred from a parent's acquiescence in the severance of the relationship. Carricato v. Carricato, 384 S.W.2d 85 (Ky. 1964).
39. Emancipation, being in derogation of the parent-child relationship, is not lightly to be assumed, and must be proven by clear and convincing evidence. Carricato v. Carricato, 384 S.W.2d 85 (Ky. 1964); Inhabitants of Town of Camden v. Inhabitants of Town of Warren, 160 Me. 158, 200 A.2d 419 (1964). Furthermore, many cases contain statements to the effect that emancipation depends upon the will of the parent. See Hall v. Fall, 235 F. Supp. 631 (W.D.N.C. 1964); Carricato v. Carricato, 384 S.W.2d 85 (Ky. 1964); Wurth v. Wurth, 313 S.W.2d 161 (Mo. Ct. App. 1958).

One doctrine which might be of aid to agencies and children in resisting parental control is that of emancipation of the child through wrongful or harmful conduct by the parent. This result was reached in Lucas v. Maryland Drydock Co., 182 Md. 54, 31 A.2d 637 (1943), in which the court held that an adolescent had been emancipated by his father's brutal treatment. The finding of emancipation may have been the result of the procedural setting in that case. The father was attempting to assert a right to his son's wages; the defendant was the son's employer. It is unlikely that a child could successfully bring an action seeking a judicial declaration of his own emancipation. An agency might, however, attempt to use this theory in legal proceedings against the parent; the favor accorded the parent-child relationship would weigh against its success.
to seek such a remedy is also present. The "balance of power" in the parent-child relationship clearly favors the parent.

It is clear that in the relationship among parents, children and third parties, the balance of power rests with the parent, and the State is very reluctant to intrude upon the parents' authority over the child. Because of this emphasis, agencies and their juvenile clients might experience great difficulties in encounters with parents, even if there were no question of legal proceedings involved. The parent, having control over his child, may use extralegal means to prevent the counseling relationship, if he discovers its existence. He may deny privileges, or limit financial help, which could force the child to refrain from taking advantage of counseling. He might devise restrictions upon the child's freedom of action, such as curfews or close supervision of movement and activities, which would also effectively halt the counseling relationship. He might, of course, forbid the child to continue contact with the counselor, and enforce the order by direct physical action. While no question of agency liability would be involved, the results would be harmful for the child in need of help. He would be denied whatever benefit he was receiving from the counseling relationship, and might even be subject to parental reprisals for seeking outside help.

The State's Power

The parent's right to control of his child is not unlimited, however. The State, because of its special concern for the protection of children, has an interest in the child's welfare which may be paramount to the right of the parent. The power of the State, known as parens patriae, springs from its power to protect those subjects who cannot protect themselves, and from its interest in the proper upbringing of future citizens. The doctrine permits the State to regulate and restrict the rights and duties of parents when the need is great or the matter is particularly relevant to the child's future relations with society. One example of an area in which the State's interest may predominate is that of the parent's duty to educate his child. It has also been held

40. See notes 7-15 supra and accompanying text.
43. Chandler v. Whatley, 238 Ala. 206, 189 So. 751 (1939) (state will deprive parent of custody in cases of gross misconduct or lack of capacity to train child); State v. Jackson, 71 N.H. 552, 53 A. 1021 (1902) (state may require father to send child to school).

An attorney who also teaches young children has expressed cynicism about this "paternalistic tug-of-war between the state and parents for the control of children." Arons, Compulsory Education: The Plain People Resist, SATURDAY REVIEW, Jan. 15, 1972, at 57, col. 2. Mr. Arons believes "debate about state-versus-parent control unintentionally obscures the increasingly painful observation that neither of these claimants is really trusted to provide a supportive, humanistic, and self-actualizing child-rearing atmosphere, and that both may be becoming dysfunctional and alienating." Id., col. 3.
44. State v. Bailey, 157 Ind. 324, 61 N.E. 730 (1901). However, there are limitations upon a state's ability to restrict the parent's duty to educate his child. There must be some compelling interest. See Pierce v. Society of Sisters, 168 U.S.
that the State under certain circumstances may remove a child from his parents' custody in order that he may be provided with necessary medical care. The power to regulate is in obvious conflict with the natural rights of the parent. The factor which is said to determine whose interest is superior is the welfare of the child. If there is a sufficiently clear danger to the child's welfare presented by continued parental control then the parent's right may yield.

The power to abrogate parental rights rests only with the State as a result of its special position, and does not extend to third parties. The State may, however, decide to place control of the child in a third person either before or after the exercise of such power by the third party. Thus if an agency provided emergency care to a minor and the parents later sought damages for the violation of their parental rights, the protection normally afforded the State might be granted to the agency if the court found that the agency assumed the control which the State would have placed in the agency had the State been brought into the situation. The agency could also invoke the power of the State through a petition to the juvenile authorities.

In any legal proceeding, however, an agency might be hampered by a natural bias in favor of parental control which could affect the finder of fact. For this reason, it is perhaps wisest for agencies to avoid resort to the courts as a means of solving problems caused by parental misconduct.

LEGAL PITFALLS FOR AGENCIES

The agency attempting to counsel minors without parental consent is clearly foreclosed from any affirmative position in the parent-child relationship; it is also subject to negative sanctions in the form of

510 (1924) (Oregon statute which prohibited parents from sending children to private schools was held to restrict unreasonably the liberty of parents to direct the education of their children); Meyer v. Nebraska, 262 U.S. 390 (1923) (statute which prohibited teaching of German held violative of due process since the state couldn't interfere with parental rights unless the danger was more substantial). See generally Kleinfeld, The Balance of Power Among Infants, Their Parents and the State, Part II, 4 FAMILY L.Q. 409, 415-24 (1970); Part III, 5 FAMILY L.Q. 64, 91-101 (1971).


46. Some cases indicate that the power of the State is supreme over natural rights. See, e.g., Chandler v. Whatley, 238 Ala. 206, 189 So. 751 (1939). A similar explanation is that the usual delegation of control to the parents is a trust. However, an uneasy balance of natural rights of the parent and State control seems to be a more accurate depiction of the interrelationship of the two in the American legal system. See Kleinfeld, Part III, supra note 44, at 68.


48. A third party has authority to invoke criminal statutes such as those relating to child abuse. See, e.g., Md. ANN. Code art. 27, § 35A (1971).


50. See notes 77-82 infra and accompanying text.
specific actions for interference with parental control. In addition to these actions, specific problems may result from the effect of the child's disabilities and the position his parent occupies.

**Actions Against Agencies**

Agencies may be subject to civil liability for counseling activities. The chief, and perhaps the only real, danger in this context is liability for child enticement. The tort of child enticement includes enticement, abduction and harboring. While under early common law a father had a right of action for enticement only if the child were his heir, later cases have held that there is a cause of action against every person who knowingly interrupts the relation between parent and child, or abducts or harbors the child. The action was originally based upon the loss of the child's services; however, courts generally allow recovery for mental suffering, destruction of the household, and the loss of society of the child which results from the defendant's actions, even if no services were actually rendered by the child. In situations not involving actual abduction, there must be some persuasion upon the defendant's part in order to render him liable. However, if there is persuasive action by the defendant, the fact that the child left parental control willingly is no defense to the action. The action has been brought against a number of different parties in different situations; the defendants are not necessarily feuding parents or evil strangers.

The possibility of liability for child enticement upon the part of an agency may best be observed by examining hypothetical situations involving typical agency action. A counselor might be approached by a girl with a romantic problem — for example, a sixteen-year-old dating a twenty-two-year-old man whom her parents have forbidden her to see. After talking over the problem, the counselor might decide there is no harm in the relationship and encourage the girl to carry

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51. Enticement is persuasion away from the parent's control; abduction is physical seizing without the child's consent; and harboring is shielding the child or providing him with refuge from his parents.
52. 3 W. BLACKSTONE, COMMENTARIES * 140.
53. See, e.g., Howell v. Howell, 162 N.C. 283, 78 S.E. 222 (1913); RESTATEMENT OF TORTS § 700 (1938).
54. See, e.g., Washburn v. Abram, 122 Ky. 53, 90 S.W. 997 (1906).
55. See, e.g., Steward v. Gold Medal Shows, 244 Ala. 583, 14 So. 2d 549 (1943); Soper v. Igo, Walker & Co., 121 Ky. 550, 89 S.W. 538 (1905) (dictum).
56. Soper v. Crutcher, 29 Ky. L. Rptr. 1080, 96 S.W. 907 (1906). But see Mayes v. Watt, 387 S.W.2d 872 (Ky. 1964) (the fact that the child went at his own request is not a material fact). It has also been held that merely employing a minor without his parent's consent is actionable because of the father's absolute right to the child's society and services. See Travilinsky v. Ringling Bros. Circus Co., 113 Neb. 652, 204 N.W. 388 (1923).
it on in disobedience of the parents’ wishes. Here there would be minimal chance of liability. Under the broad Restatement definition of the tort there was interference with parental control over the child because the agency directed the girl to disobey a command of her parents. However, most of the cases of enticement have involved situations in which the child actually left parental custody. Thus the court could hold the agency liable if it wished under the broad definition, or it could hold that this was not sufficient interference or that the action on these facts was too much in the nature of the prohibited action for alienation of affections.

A situation which involves greater interference with parental control would be presented by a fifteen-year-old boy who was having a problem with hallucinogenic drugs, experiencing recurrent psychological problems. The counselor might decide to send the child to see a psychiatrist, in defiance of the parents who have refused to allow the child to seek help. Here there would be a stronger possibility of liability, since the agency would have taken positive action. The possibility seems to depend, much as it does in the first example, upon whether a court wishes to take a broad view of the tort, or to require an actual interference with custody.

Actual persuasion from custody presents a clearer, though still not ironclad, case. A child may come to the agency and tell the counselor that he can’t live with his parents who constantly abuse him. He would probably ask what he should do. If the agency told the child to move out, and perhaps helped him find a place to stay, the facts would fit the tort of enticement, particularly if the child was induced to leave in part by what he felt to be the wise advice of the counselors.

The strongest possibility of liability would arise in a situation which would fit a harboring theory. A minister in Ocean City could be approached by a child who had run away from his home in Severna Park, and who was running out of money, but absolutely refused to go home or to allow his parents to be informed. The minister might help the youth to find a job and find him a place to live. A downtown counseling center or runaway home could be consulted by a child who had left home, was living with an older friend and needed advice. The agency might not only help the child, but might also refuse to help the parents find him when they inquire of his whereabouts, instead concealing him. Here it would seem that the agency actually shielded the child from his parents’ control and harbored him.

None of these situations are factually improbable and all involve some degree of possible liability. While it seems somewhat out of tune with modern attitudes to speak of liability in the counseling context, in view of the fact that the tort has been applied to a broad

59. See text accompanying note 53 supra.
60. The action of alienation of affections was abolished by the legislature. Md. Ann. Code art. 75C, § 2 (1969). One might argue that the prohibition should extend to child enticement actions which are similar to alienation of affections and thus within the policy behind the prohibition. However, the Court of Appeals has concluded that this prohibition does not extend to actions for criminal conversation. DiBlasio v. Koladner, 233 Md. 512, 197 A.2d 245 (1964). The court, then, has seemed disinclined to extend the statute beyond its terms.
variety of factual situations, and in view of the solicitous concern with which courts view the parent-child relationship, liability might be found within such an unlikely situation. The agency would probably contend that its action was not the cause of the damage to the parent-child relationship, finding that cause in the long history of troubles in the family. The court's view of causation might be more shortsighted. If a court wished to find liability, the materials would be present. A vigorous argument against the policy of unbridled parental control might, however, persuade a court to limit the application of the tort in the counseling context.

Another possible problem which those who counsel children might encounter is that of criminal responsibility for child enticement. At common law, child enticement was not a criminal act, but Maryland and other states have statutes which provide criminal penalties for those who entice or persuade children away from their parents or harbor them. In Maryland, this statute applies only to children under twelve, and, therefore, would not be applicable to the majority of children who would seek counseling, although it is conceivable that children under twelve might be involved. In situations in which a statute would apply, the elements of proof are much the same as those required to establish civil liability.

Those who counsel children without parental consent could also be liable for alienation of affections. According to some authorities, there exists a cause of action which may be brought by one whose child's affections have been alienated; however, others state that there is no such cause of action. It is said that the right of action for the alienation of the affections of one's spouse is based upon the right to conjugal society, exists by virtue of the marriage relationship, and is peculiar thereto, and that, therefore, no cause of action exists where one's child is involved. The question is moot in the numerous states, like Maryland, which have abolished any action for alienation of affections. While the actions taken by an agency might well estrange a child from his parents, and thus present an otherwise valid cause of action, there seems to be little likelihood of recovery on this theory.

Agencies might also be confronted with the possibility of criminal responsibility for concealment of a crime. An agency would be liable if it actually counseled a child to commit a crime; in this instance it would become an accessory before the fact and would be responsible

63. See, e.g., State v. Huhn, 346 Mo. 695, 142 S.W.2d 1064 (1940) (penalty for taking child under twelve away from parent with intent to conceal or detain); McNelly v. State, 142 Tex. Crim. 695, 152 S.W.2d 771 (1941) (penalty for knowingly enticing or decoying minor away from parent or person in parent's stead); Cummins v. State, 36 Tex. Crim. 398, 37 S.W. 435 (1896) (penalty for knowingly enticing a child away from parent held inapplicable on mere fact that defendant hired minor with knowledge that he had a parent living).
64. See Restatement of Torts § 699 (1938).
66. 210 N.W. at 929.
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Thus if the agency counseled the child to have an illegal abortion, it would be guilty of a misdemeanor. The agency might also run afoul of criminal restrictions if it were to discover the commission of a crime by a minor through his disclosures, and then fail to reveal this fact to the proper authorities. The agency might be responsible as an accessory after the fact or for misprision of felony. These possibilities are present only where felonies are concerned and do not extend to concealment of misdemeanors. It is difficult to see how a counselor could be an accessory after the fact unless he were actually to overstep the bounds of professional responsibility and become involved in a plot. Responsibility for misprision of felony would be more likely in a situation wherein the counselor learns of the felony but does not inform on the child. There seems to be little danger from misprision of felony in a counseling context, however, since mere silence or failure to disclose one's knowledge of a crime does not lead to liability; there must be some affirmative attempt to conceal the felon. Thus, if an agency learned of a violation of the narcotics laws in the course of counseling a minor who had a drug problem, it would probably not be criminally liable if it merely failed to disclose its knowledge of the crime. However, if it concealed a felon when it knew that law enforcement officials were about to catch him, then it might be responsible. If an agency actively helped young murderers to dispose of incriminating evidence then it would clearly be liable. However, these requirements seem to envision a more active role than any agency would play.

Liabilities under Juvenile Laws

Agencies might also encounter problems arising from the juvenile provisions of the Maryland Code. These provisions were recently overhauled to provide that a child who is habitually disobedient,

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69. See Robinson v. State, 5 Md. App. 723, 249 A.2d 504 (1969). An accessory after the fact is one who, knowing a felony has been committed, relieves, comforts or assists the felon. Watson v. State, 208 Md. 210, 117 A.2d 549 (1955). In order to be held under this concept, the defendant must intend to enable the felon to escape detection; mere acts of charity which relieve or comfort the felon but don't hinder apprehension do not render one an accessory. Bielich v. State, 189 Ind. 127, 126 N.E. 220 (1920). In effect one must act in concert with the felon.
70. See State v. Michaud, 150 Me. 479, 114 A.2d 352 (1955). Misprision, a common law crime, consists of criminal neglect to bring the offender to justice after commission of the crime, without such assistance as will render the defendant an accessory. State v. Flynn, 100 R.I. 520, 217 A.2d 432 (1966); State v. Wilson, 80 Vt. 249, 67 A. 533 (1907).
73. Ch. 432, [1969] Md. Laws 1080. The purposes of the new subtitle are, among others, to remove from children committing delinquent acts the taint of criminality, to
ungovernable or beyond control without the fault of his parents may be adjudicated to be "in need of supervision." If the child is found to be in need of supervision the court may make such disposition as is most suited to the welfare of the child. Presumably this includes commitment and confinement, as well as a number of lesser restrictions upon the child's freedom of action. Parents who discovered the child's consultation with an agency could seek to have the child confined or restricted by complaining that he was beyond their control. If a child refused to go to school and the parents could not force him to do so, they might ask the court to assume control. There might be cause for proceedings if the child disobeyed all parental restrictions in the form of curfews, and deserted the home for long periods of time. The parents might dislike the friends with whom the child associated, or have good reason to believe that he consumed drugs. While this ungovernability might not be the fault of the agency, the court might so restrict the juvenile's freedom of action as to prevent him from seeking any further help. Confinement would also sever the relationship.

Of equal significance to agencies, persons who are found to have contributed to the child's ungovernability may be held criminally responsible. The juvenile court has jurisdiction over persons over eighteen for willful acts causing a child to be adjudicated neglected, delinquent or in need of supervision. The language of the statute seems broad enough to include persons who counsel the child and who may have, in some manner, contributed to the fact that the parent could not control the child. If a child ran away, and was aided by a counselor in finding a place to live and in concealing himself from his parents, the counselor might be held liable if he had deliberately and knowingly flouted the parents' wishes. No agency has yet been held under this provision; nor have there been any reported unsuccessful attempts. However, parents who wish to create trouble for those who help their children may attempt to claim that the child became ungovernable because of his contact with the agency.

place a child in a wholesome family environment wherever possible, and to separate a child from his parents only when necessary for his welfare or in the interests of public safety. Md. Ann. Code art. 26, § 70 (Supp. 1971).

74. Md. Ann. Code art. 26, § 70-1(i)(2) (Supp. 1971). This is, of course, only one of the provisions under which the court may acquire jurisdiction. The child may be delinquent, dependent, neglected or mentally handicapped. Id. § 70-2. See generally Md. Ann. Code art. 26, §§ 70 to 70-14 (Supp. 1971). Although the provision which included runaways under the definition of delinquent, ch. 797, § 1, [1945] Md. Laws 964, was repealed, the Code still provides that a law enforcement officer may take a child into custody if he has reasonable grounds to believe the child is a runaway. Md. Ann. Code art. 26, § 70-9(4) (Supp. 1971); thus runaways are probably still subject to the court's jurisdiction. The juvenile statutes apply only to children under eighteen. Id. § 70-1(c).


76. Md. Ann. Code art. 26, § 70-2(a)(7) (Supp. 1971). The court may also assume jurisdiction over persons who encourage an absence of proper care. Id. § 91 (1966). The penalties for violation of either sections are the same: up to $500 in fine and/or up to two years in jail. Id. § 99.
On the other hand, if the agency believed that a child was threatened with harm — emotional or physical — because of parental behavior, the agency could invoke the provisions of the juvenile code to limit or terminate parental control. An official in the Maryland Department of Juvenile Services has indicated that juvenile officials prefer to accept from parents petitions for determination that a child is in need of supervision or neglected, but they will accept petitions from agencies.

An agency would be foolhardy to petition for juvenile court determination of a child's status without first attempting to intervene directly with the child's parents. The agency should also consider whether the alternative forms of shelter and support available to the child will constitute an improvement over his present situation. The agency must realize that the finder of fact is likely to be biased in favor of parental control and anyone seeking to terminate such control will bear a heavy burden of proof.

Consent to Medical Treatment

The control vested in parents by the law resulted in the phenomenon that at common law children were unable to consent to medical treatment. This presents a problem to agencies which treat sex- or drug-related problems or other problems involving a need for medical treatment. On the medical level, the problem has been mitigated in Maryland and in some other states by the passage of statutes which permit

77. The juvenile provisions permit "any person having knowledge of the facts" to file a petition invoking the jurisdiction of the juvenile courts. Md. R.P. 901(b), 903. Under the Code, a resulting court order may place legal custody of the child in a parent other than his parent [Md. Ann. Code art. 26, § 70-1(s) (Supp. 1971)] leaving the parents with certain rights and the obligation to support the child [Id. § 70-1(t)]. The court may place the child in a facility approved by the Department of Juvenile Services or the Department of Social Services [Id. §§ 70-12(e), 70-19(a)]. Both agencies have "purchase of care" funds with which they can pay approved agencies or individuals to shelter minors in need of care outside their parents' homes. Telephone interview with Edward J. Lang, Assistant Regional Supervisor, Department of Juvenile Services, Baltimore City, Jan. 18, 1972.

78. See note 74 supra and accompanying text.

79. A neglected child is one who requires the aid of the court; and either
   (1) Has been abandoned or deserted by his parents . . . or
   (2) whose parent . . . does not adequately supply him with food, clothing, shelter, education . . . or
   (3) who suffers . . . serious harm from an improper home environment . . .

80. Edward Lang indicated that the Department of Juvenile Services prefers petitions concerning children in need of supervision to be filed by their parents, but he said that a counseling agency may file such a petition if the parents will not. An intake officer for the Department of Juvenile Services filed such a petition on one occasion when the parents were unwilling to seek the assistance of juvenile authorities. Interview with Edward J. Lang, supra note 77.

81. A court would be unlikely to act on a petition supported by nothing more authoritative than the agency's repetition of the child's statements to a counselor. Furthermore, despite the stated interest of the General Assembly in avoiding any taint from an adjudication under the juvenile provisions [Md. Ann. Code art. 26, § 70-21 (Supp. 1971)], the experience can be traumatic for both parents and children and this procedure should not be used unless all other efforts on behalf of the child have failed.

82. As Mr. Lang put it, "parents are still just about the best thing we have for raising kids." Interview with Edward J. Lang, supra note 77.

consent in certain situations. Maryland's statute was recently repealed and re-enacted in a more concise form which provides that a minor shall have the same capacity as an adult to consent to medical treatment if he or she is eighteen, a high school graduate, married or the mother of a child, or if he or she seeks treatment or advice concerning venereal disease, pregnancy or contraception not amounting to sterilization. The statute also provides that a minor may consent if "in the judgment of a physician treating a minor, the obtaining of consent of any other person would adversely affect the life or health of the minor." While this provision seems to be aimed primarily at emergency situations, its terms could well include non-emergency treatment of drug addiction. The fact that discretion is granted to the physician eliminates problems from his viewpoint. While the statute eliminates many of the difficulties involved in treatment of minors by agencies, it would provide no protection to an agency which desired to provide medical treatment not within the specified categories to a person under eighteen. Moreover, the statute offers no protection to an agency which refers a minor for medical treatment or counsels the minor after medical treatment has been concluded.

A similar statute has been enacted in the area of mental health treatment. As written prior to 1971, section 135A of article 43 provided that a minor of eighteen who professed to have a mental or emotional disorder could consent to its treatment by a physician or clinic. In 1971 the age limit was lowered to sixteen. This statute provides protection when a child is being treated for a mental disorder by an agency doctor; however, medical personnel are the only people protected. Thus many of the types of treatment and problems with which counselors are concerned are excluded. One criticism which might be leveled concerns the fact that the doctor may inform the parents of consultation if he in the exercise of his sole discretion decides that such action is proper. This might deter some children from seeking help. However, this provision may be justifiable where potentially dangerous disorders are involved.

The primary criticism to which these statutes are subject is that they leave much ground uncovered, and fail to protect many counseling

88. Id. § 135(a) (5).
89. Another type of discretion is granted to the physician; he is empowered to inform the parents of treatment without the consent or over the express refusal of the minor. Md. Ann. Code art. 43, § 135 (Supp. 1971). This provision seems unjustifiable; if a child is able to consent to medical treatment there is no reason why his parents should know of this fact. It may lead to retaliation on their part for this revolt against their control.
functions which agencies offer. Children who come to agencies for help have many problems which could not conceivably be termed mental or emotional disorders even under the most liberal interpretations of those terms. Thus many counselors are left unprotected. It might be argued that since ordinary counseling services do not constitute medical treatment, the minor does not need parental consent; one needs no consent merely to talk to another person. The argument which may be made for extending the scope of the statutes is that a statute could offer protection to the agency against parental harassment in the form of such actions as child enticement. The advisability of extending these statutes may well turn upon whether counselors bear sufficient similarity to doctors, especially in terms of the State’s ability to regulate their activities.

Parents’ Right to a Child’s Records

In some situations communications made by one person to another are protected against disclosure in a legal proceeding because of the public interest in fostering such communications. Agencies and their juvenile clients would like to see communications made by the child to the agency protected in this fashion. However, most of the communications by the child are not so protected for two reasons. The first is that the law has declined to include the records of social workers as to disclosures made by clients within any privilege, despite the feeling of many persons that such records are entitled to protection. Some communications might be privileged, but these constitute only a small portion of the possible range of disclosures which are made by a minor receiving help.

There is also reason to believe that even if more types of disclosures were to be protected, a child would still not be able to take advantage of the privilege because of his legal status. The decision on whether or not a client will exercise his power to prevent disclosure of communications he has made rests with the client. However, as seen above, a child is not a person who is able to exercise full legal discretion. Thus the decision to exercise or not to exercise a privilege should rest with the person whom the law has designated to exercise

93. The Supreme Court has held that children have first amendment rights. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969). However, this does not reach the problem of parental control, since the first and fourteenth amendments only protect persons from restrictions imposed by their governments. The real problem is that of parental control of the child’s actions; forbidding a child to talk to someone is within this control. See notes 25-39 supra and accompanying text.

94. See notes 51-58 supra and accompanying text.

95. See further discussion of this question infra p. 352.


97. See, e.g., Md. ANN. Code art. 35, § 13A (1971) (patient may refuse to disclose or to permit disclosure of any communication, relating to diagnosis or treatment of his mental or emotional disorder, made to psychologist, psychiatrist, other patients or family). In general, records of agencies under consideration would not be so privileged.

98. See notes 7-15 supra and accompanying text.
control over the child—his parent. As a result of this theory, a parent would be able to obtain agency records dealing with disclosures made by his child.

Only one case has confronted this problem. *Van Allen v. McCleary* involved the right of a parent to have access to his child's confidential school records. The Supreme Court of New York, in an appeal from a decision by the Commissioner of Education, permitted the parents to examine the records; there being no precedent, it based its decision on the law of public records. The reasoning employed by the Commissioner in his decision was that although the records were privileged and confidential, such privilege exists merely to protect a client from disclosure to other persons. Since the juvenile client is one who can not exercise full legal discretion, that discretion rests with his parents who must exercise it for him. A parent, being part of the school-client relationship, may see the records because he is not one of those outsiders against whom the privilege was created.

The implication of this doctrine when applied to agencies is that parents should be allowed to see all the records containing communications from their child. Even if agency records were within a legal privilege, a parent could, through legal action, force the agency to give him the records. There would probably be many records which would interest the parent. The agency would consider this harmful since it would destroy the private relationship between client and counselor, and allow the person whom the child is perhaps most anxious to prevent from seeing those records to see them. It is true that the courts need not adopt the Commissioner's theory in a similar situation; however, it seems to be the reasonable result of the law's view of the parent-child relationship. Only if the law's emphasis were changed to reflect a child's ability to exercise discretion would the result be changed.


100. 211 N.Y.S.2d at 513. Since at common law anyone with a sufficient interest in public records could examine them, and since the parent had an interest in the records because they had delegated their educational function to the school, the court decided that they could see the records. *Id.* That part of the controversy is not on point in a discussion of private agencies. Baltimore City presently has "no written policy" on counseling by staff members or on confidentiality of student records, although "[t]here can be no question but that teachers, counselors and other staff members are approached with the kinds of problems" discussed here. Letter from Robert C. Lloyd, Assistant Superintendent of Baltimore City Public Schools for Pupil Personnel Services, to Maryland Law Review, Apr. 4, 1971. A proposed rule for the Baltimore school would make all student records, including confidential ones, available to the parents. Proposed Policies and Procedures of Baltimore Board of School Commissioners 751:3 (Nov. 1970). The situation may be complicated by the passage of a new statute, Md. Ann. Code art. 77, § 85A (Supp. 1971), which provides that when a student seeks counseling for drug abuse from a teacher or other professional educator, statements the student makes and observations and conclusions derived from the counseling by the teacher are privileged. Thus ordinary records such as grades or test results are probably still available for the parent to view, but any communication made by the child when he seeks help for a drug-related problem is not.

101. *In re Thibadeau*, N.Y. Dep't of Educ. No. 6849 (1960). The Supreme Court quoted the Commissioner's language in *Van Allen*, and stated that it agreed with the policy behind the decision. 211 N.Y.S.2d at 513.

102. See Fisher, supra note 96, at 618.
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INCREASED PROTECTION FOR AGENCIES

It is evident that in many respects the law may hinder the formation of counseling relationships in which children are involved without the knowledge of their parents. An agency, recognizing a child's need for help, may choose to work with the child and hope that the parent remains ignorant; it must fear that an irate parent may halt the relationship or attempt to make use of the legal tools for harassment which have been described. Since there are reasons why counseling without parental consent may be a useful device for aiding children with problems, benefits would result if the hindrances posed by the law were removed.

There is evidence that counseling and related services are helpful to a child who is experiencing problems whether they are caused by parents or arise from other sources.\textsuperscript{103} Counseling services offered to minors by agencies may be more effective if carried on without the knowledge of parents. The primary factor may be described as the deterrent effect: a child, for many legitimate reasons, may wish that his parents not be told that he has sought counseling. A young person may therefore state that he will accept counseling only if his parents are not informed. The knowledge that an agency may notify the parents will deter children from going to the agency at all. A child would thus lose any benefits which might be provided by the agency's services. For instance, a female under sixteen who had syphilis would in most cases refuse to seek treatment and allow the disease to continue unchecked if she were afraid that her parents would be told that she had the disease. A young man of seventeen, addicted to heroin, who wanted help with his problem, might refuse to go to an agency if he thought that his parents would be called in, since he would probably find their hysteria or shock at his illegal behavior distasteful. A child who wanted to talk over problems caused by emotional mistreatment at his parents' hands would be loath to approach an agency if he understood that his parents would be told; he might fear further mistreatment by his parents if they discovered that he was going outside the family to seek help. It is difficult to see how a child would be harmed by being counseled without his parents' knowledge in these instances; it is certainly better to provide the services than to allow the problems to go unsolved.\textsuperscript{104} This view is endorsed by many officials involved with juvenile offenders.\textsuperscript{105}


\textsuperscript{104} As stated above, many social workers believe that it may be necessary to involve the parents in the counseling process to clear up the complete problem. See note 3 supra. If, however, the child refused to accept counseling if the parents were told, it would be better to give what help could be given rather than to allow the problem to continue untreated. Furthermore, no parental involvement would be necessary to treat such a problem as venereal disease.

\textsuperscript{105} One official expressed the view that "counseling agencies are helpful in keeping juveniles from becoming involved with the law." Letter from William C. Litsinger,
Another reason why it may be necessary to counsel children without their parents' knowledge is that the parent may try to stop the counseling if he knows of the relationship. For instance, a parent who knew that he had mistreated his child would probably wish that this mistreatment not be revealed to persons outside the family. A parent may desire that his child not seek help because he may feel that the child's need to go outside the family is a reflection upon the state of the parent-child relationship or a sign that the child feels that the parent was unable to help him. A parent who discovered that his daughter was trying to obtain contraceptives might feel that her obtaining them will lead to immorality and may try to prevent it. In each of these cases the parent may halt the counseling relationship and the problem will remain untreated.

The final reason for allowing counseling relationships without parental knowledge is not unique to the parent-child problem. It revolves around the enhanced value to counseling relationships created by freedom from fear of disclosures made in the course of the relationship. Secrecy is needed in many such relationships, regardless of the age of the subject, to insure effective help. Disclosures made in the course of counseling are often extremely personal and embarrassing; in order that the subject will have full freedom to speak his mind it is necessary that he know that his disclosures will be kept secret. A parent is an outsider to the relationship, he should no more be permitted to know of disclosures made therein than should any other person. The child may in fact be more anxious to hide these disclosures from the parent than from anyone else, since many of the disclosures

Jr., Chief of Program Planning for the Maryland Department of Juvenile Services to Maryland Law Review, Aug. 27, 1971. This view was supported by responses to a Maryland Law Review questionnaire from Judge John E. Raine, Jr., Circuit Court for Baltimore County, Judge Robert I. H. Hammerman, Supreme Bench of Baltimore City, and Judge Orman W. Ketcham, Juvenile Court of Washington, D.C. The captain of the Baltimore County Police Intelligence Division recently expressed support for a Towson counseling service which he said had reduced the drug abuse problem in the area. Evening Sun (Baltimore), Dec. 8, 1971, § D, at 36, col. 6.

106. This belief, however, seems to have no foundation in fact. "Suffice it to say, in this connection, studies have indicated little if any effect from the increasing availability of contraceptives on the incidence of premarital or extra marital sex relations." Pilpel & Wechsler, Birth Control, Teenagers and the Law, 1 FAMILY PLANNING PERSPECTIVES 29 (1969).

107. The parent has the power to halt the relationship physically. See text supra p. 338.


109. Counseling is included in the psychotherapeutic professions, since a psychotherapeutic relationship is defined as one in which a person is seeking help in solution of problems caused by psychological and/or environmental pressures from another whose training and status are such as to warrant others in confiding in him for the purpose of such help. Id. at 617.

110. Id. at 620. The argument was made there to support the creation of a legal privilege, which would shield the client from disclosure of what was said and of the fact of consultation. It also seems logical to use it to advocate secrecy. A similar position was taken by James A. Ryan, Supervisor, Family Unit, Catholic Social Services of Baltimore, in answer to the Maryland Law Review questionnaire. Mr. Ryan stated: "A person in trouble needs assurance of confidentiality when he seeks help, even in the face of a court order to release information revealed in confidence."

111. He is an outsider in the normal understanding of the relationship. The law may not share this view. See notes 98–102 supra and accompanying text.
may concern the relationship with the parent and the child's feelings about the parent. Thus the child as a client should be permitted to keep the relationship hidden from his parents just as much as from any other person.

Even if these reasons for affording protection to the agency and to the counseling relationship carried on without parental knowledge be granted, it is possible that there is no need for change in the law. It is apparent that the present state of the law does not deter the formation of effective counseling relationships. The agencies questioned, and others, are engaged in this type of work. None has been subjected to legal harassment. Perhaps children are well versed at keeping such consultations secret from their parents, or perhaps parents who find out have no inclination toward legal reprisals.

Further protection is desired by agencies, and there are specific changes in the law which would accomplish this result. One change might be a statute which abolished the action of child enticement in the same way that heartbalm statutes abolished the actions for alienation of affections and breach of promise to marry. There seem to be few legitimate reasons for retaining this tort in modern society. The need for statutory change, however, might be minimal, since no action of this nature has yet been brought against an agency, and it seems likely that the courts will hold that agency actions are not within the scope of the tort.

Agencies favor the creation of a social worker-client privilege. Such a privilege would protect communications made by a child to the agency from disclosure to outsiders in legal proceedings, if the parent is considered an outsider.

The primary reason why specific formal changes in the law will not give complete protection to agencies is found in the law's view of the parent-child relationship. Results which hinder counselors, such as the possibility that a child might not be able to avail himself

112. See note 1 supra.
113. See notes 51-60 supra and accompanying text.
115. One reason for retaining the tort might be for use by a parent where his ex-spouse violates a custody order and lures the child away. This action could, however, be punished by a contempt order, although the wronged parent would then get no damages to soothe his outraged feelings. A parent also might wish to use the tort to sue someone who lured his child away in order to harm the child. See, e.g., The Sun (Baltimore), Oct. 4, 1971, § C, at 20, col. 1 (girl was lured away by salesmen, and forced to sell magazine subscriptions). Both of these examples point up the law's misplaced emphasis in parent-child relations. Although in reality the primary victim of these wrongs is the child, in the court's outworn concept it is the parent who suffers the compensable harm through the loss of the companionship and services of the child. Retention of the tort indicates the law's assumption that the parent's interest in the child coincides with the child's welfare. Counselors make no such assumptions.
116. Such a privilege has been advocated by several writers. See Fisher, The Psychotherapeutic Professions and the Law of Privileged Communications, 10 WAYNE L. REV. 609 (1964); LoGatto, Privileged Communication and the Social Worker, 8 CATHOLIC LAWYER 5 (1962). Several respondents to the Maryland Law Review questionnaire made the same suggestion.
117. See notes 98-102 supra and accompanying text.
118. See notes 7-50 supra and accompanying text.
of a privilege, occur because the law does not recognize children as complete persons. Instead of judging a child's ability to govern his own behavior on an individual basis, the law regards him as incapable of governing himself because of his minority, and reposes control with his parents. This emphasis is probably impossible to change without a change in the basic fabric of our society.\(^{119}\)

The problem also results from the fact that an agency has no legal authority to challenge the parent. The State and its related agencies may abrogate parental control under certain circumstances. However, private agencies are not legally recognized as anything other than third persons who have few rights as against the parent. While agencies should be encouraged to carry on counseling, if this encouragement is undertaken on a legal level the results may not be completely helpful. To illustrate, the possibility was mentioned\(^{120}\) that a statute similar to the medical and mental health consent statutes\(^{121}\) might be passed to give the agencies protection from parental harassment. The protections contained in those statutes are limited to medical personnel, persons over whom the State exercises control because it licenses and regulates them. In the case of a counseling statute, it would likewise be necessary to include a definition of what persons are to be included within the terms of the statute; the State would be reluctant to give blanket protection to some class of persons over whom it could exercise no control.\(^{122}\)

If agencies were to be licensed and regulated by the State, much of their present utility in terms of counseling young people might be dissipated. Many of the minors who seek help without their parents' knowledge seek it from persons who they feel have no taint of official authority. A child with a drug problem or a delinquency problem probably prefers to go to an agency which is strictly private and has no connection with the government; he may either fear punishment or he may distrust anyone whom he feels has a connection with "authority." Therefore, were agencies to be regulated it might deter young persons from approaching them because of the agencies' official position. The move toward this position might well be the move which destroys their utility.

Thus it seems best to encourage such counseling on an informal level only. The knowledge by children and parents that such help

\(^{119}\) It is possible to reach the conclusion that such a basic change is desirable, necessary, or even in the process of occurring. The question is discussed in 1970 WHITE HOUSE CONFERENCE ON CHILDREN, THE RIGHTS OF CHILDREN (advocating, inter alia, increased rights for children and increased legal supervision of the family); LOOK, Jan. 26, 1971, at 21-86.

\(^{120}\) See note 94 supra and accompanying text.


\(^{122}\) An initial problem might be found in deciding whom to license. The counselors included in this discussion embrace a wide range of different types of agencies. They address themselves to many different types of problems, and are often possessed of diverse training and qualifications. For instance, there is a vast difference between a trained social worker, a telephone volunteer, a doctor involved in a drug treatment program, a minister, and an educator who works at a college counseling center. It might be hard to find a common characteristic which could be used to deny protection to non-agency personnel. One solution might be a licensing body which granted protection on an ad hoc basis.
is available may help to keep parental behavior within the bounds of propriety.123 Because these agencies are trusted and used by young people, and because they provide help for persons who have no other place to turn, the law should discourage harassment of them by parents and others.

GUIDELINES FOR AGENCIES

The counseling of minors without parental consent is an area in which law and public policy are in sharp conflict. The result is uncertainty among those involved in youth counseling, typified by the following advice given to a counseling agency:

... it seems obvious to say that the safest legal position for an agency to assume would be to decline to interview or to permit attendance in a group session of any unmarried person under 21 years of age, except with the consent of the parent or guardian. In practice, it would seem that few agencies adhere to such a restricted and rigid policy, and neither would we recommend such a restricted or rigid policy.124

Virtually no agency adheres to such rigid guidelines. Practice and logic require less stringent limitations.

An agency risks little or nothing if it merely permits minors to talk to its counselors. The risks become greater as the counselor begins suggesting alternative courses of conduct to the person under twenty-one, rather than merely supporting the young person’s own attitudes and plans. The possibility of legal liability is greatest when the agency undertakes actual, affirmative interference with parental control, through financial support, provision of substitute housing, or concealment of the child’s whereabouts from a parent.

From the support given to counseling efforts by juvenile and police officials, it appears unlikely that agencies or individual counselors would be prosecuted criminally or charged with violation of juvenile code provisions for activities on behalf of their underage clients. The risk of civil action by aggrieved parents is greater. In such cases, the presentation of facts to the court will probably be as important as the law in the final determination.

If the agency can be found to have acted on the basis of a sound professional evaluation of a minor’s situation, the court’s decision is likely to endorse the agency’s action implicitly or explicitly.125 That

123. See Kleinfeld, The Balance of Power Among Infants, Their Parents and The State, Part II, 4 FAMILY L.Q. 409, 442 (1970). While Kleinfeld did not deal with the agency question, his suggestion was that one solution to the overwhelming imbalance of power in the parent’s favor and the lack of formal sanctions against the parent might be “greater permissiveness toward informal techniques for keeping parents within proper bounds.” Id. Encouraging counseling might be such a technique.
125. According to one authority, courts are refusing to impose liability on physicians providing contraceptive services to minors without parental consent even in states whose statutes do not permit minors to consent to treatment. Pilpel and Wechsler note that “[t]he action of the major physicians’ organizations in endorsing
"sound professional evaluation" cannot be tempered in advance by evaluation of the legal situation, because there are no clear legal prece-
dents on which to rely,126 it must continue to be based on the pro-
fessional skill and experience of the counselor. It seems likely that a
counselor with a graduate degree in social work will be presumed to have greater skill and experience in dealing with minors' problems than a telephone hotline volunteer. The time and effort demonstrably taken in trying to resolve the minor's difficulty prior to a court appear-
ance will also be an important element in the court's decision on whether to accept the agency's good faith and to adopt its position in the matter.

As long as judicial reasoning is biased in favor of parental control, agencies would still be advised to avoid legal confrontations with parents. When such confrontation is unavoidable, the bias can be overcome by effective advocates who understand that children are the real victims of the parent-child-agency triangle.