

Doug Bates *Lectures*

1997-2005

NASD  **EC**

NATIONAL ASSOCIATION OF STATE DIRECTORS OF TEACHER EDUCATION & CERTIFICATION

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As Doug so often reminded us: “Remember, it’s all about the kids!”

Introduction

The Doug Bates Lecture series grew out of a desire to honor the legacy of an early proponent of high moral and ethical standards for America's educators. An attorney with the Utah State Office of Education, Doug Bates served for a number of years as Corporate Attorney for the National Association of State Directors of Teacher Education and Certification (NASDTEC) and delivered the First Annual Doug Bates Lecture in 1997 at the NASDTEC Annual Conference in Savannah, Georgia. Doug passed away on May 22, 2000, after a valiant battle with cancer. He was loved and respected by many people nationwide and is sorely missed for his deeply felt commitment to the protection of children in our schools.

NASDTEC represents professional standards boards and commissions and state departments of education in all fifty states, the District of Columbia, the Department of Defense Educational Activity, the U.S. territories, and the Canadian provinces of Alberta, British Columbia, and Ontario. These bodies are responsible for the preparation, licensure, and discipline of educational personnel. Associate NASDTEC members include representatives of colleges and universities, Canadian provinces, and other stakeholders in teacher certification.

NASDTEC believes that all students are entitled to have teachers who are held to high standards of conduct. Its mission is to provide leadership and support to those responsible for the preparation, certification/licensure, ethical and professional practice, and continuing professional development of educators. The organization is best known for the Interstate Agreement as well as its role in professional practices. NASDTEC sponsors a national Professional Practices Institute for practitioners in the field, as well as regional workshops. In addition, NASDTEC oversees operation of the NASDTEC Clearinghouse, a database of state reports on disciplinary actions taken against educational personnel, accessible only by authorized state agencies. NASDTEC also promotes comprehensive background screening systems for educator certification and employment.

In 1997, the Executive Board of NASDTEC decided that every NASDTEC Annual Conference should include a presentation entitled the "Doug Bates Lecture," specifically devoted to issues of professional practice and ethics in education. Speakers are chosen on the basis of their demonstrated commitment to the ideals of NASDTEC—and of Doug Bates—in the area of educator moral fitness.

First Annual Doug Bates Lecture, 1997

Seeking Morality in Education

Douglas F. Bates

The following lecture was written by Doug Bates as an informal discussion among friends and was edited by National Evaluation Systems, Inc., for purposes of publication.

A Personal Update

In October 1996, a tribute for me was held at the Utah State Office of Education in Salt Lake City after I had become seriously ill and was not expected to survive. Shortly before the tribute, I had been reading a little about the life and death of Abraham Lincoln, and the article pointed out that after his death Congress wanted to make a memorial to him. One of the people who had been a great opponent during Lincoln's entire presidency stood up and said, "I just want to point out that the only thing that Abraham Lincoln did that was memorable was that he got shot." That same attitude has helped me keep all the nice things people say to me in perspective.

A strange thing happened to me on the way to a marathon last year. I had been training for the October Marathon in St. George, Utah, so after the NASDTEC Annual Meeting last year in Pittsburgh, in the middle of July, I went out and ran 14 miles. I was a bit slow and having a little trouble breathing. I thought, well, I have asthma. I was having a little trouble with my stomach, too. I thought, well, I have an ulcer. But I did the 14 miles; two weeks later, I went out and tried again, got two blocks, and collapsed. I had been to see the doctor earlier that month. My wife had been telling me, "Doug, you've got to have a physical," and I would say, "Honey, I'm okay. A little asthma, a little ulcer; it'll be all right." Nothing to worry about. I had a physical, and the doctor said, "Well you look like you're in great shape, except you might have a little asthma, maybe a little ulcer. We ought to do some more tests."

— Douglas F. Bates of the Utah State Office of Education served for many years as Corporate Attorney for NASDTEC. He passed away on May 22, 2000.

Well, after my collapse, I went in for those additional tests. My lungs weren't working quite right, and the doctors said, "Maybe you've got some asthma; we'll have to check that further." They checked my heart and that was in good shape, except that I couldn't keep running on the treadmill as long as I had hoped because I had trouble breathing. Then they ran a tube down my stomach with a camera on it and took some pictures, and there was no ulcer. So they did an ultrasound, and when they got to my liver, they found it to be filled with cancer. Some tumors were as large as golf balls. Then they did a CAT scan and found that the cancer had spread not only into my liver but into my lungs and up into my thyroid and lymph nodes. After the biopsy, the doctor said it was pancreatic cancer. He said, "Doug, we can't do any radiation or surgery. You'd be hollow if we did. The only thing we can do is chemotherapy." I asked, "Well, what will the chemo mean?" He replied, "Well, this is fairly mild; you're not going to lose a lot of hair." I responded, "Well, at this point, that's irrelevant. No one will be able to tell anyway." I asked the doctor again what the effect of the chemotherapy would be, and he told me what it probably wouldn't do. I said, "Well, I'm not concerned about that. I'm concerned about what it's going to mean for my life." He answered, "If you're a responder and respond well to it, we can maybe give you 6 to 12 months. If you're not, then very, very few months." I learned later that they expected me to die within seven weeks of that first screen. You know, it's been interesting; a lot of worries that I'd had are gone. I don't worry about osteoporosis or the collapse of the Social Security system or any of a number of those things. I even had some good news and some bad news for my boss when I went to see him. He was always fond of lawyer jokes; he used to tell them in staff meetings all the time. So when it was my turn in the staff meeting I said, "I've got some good news and some bad news. The bad news is that I've got pancreatic cancer and I'll probably be dead within a year. The good news is, at least it got the lawyer."

At this point, you can see I haven't passed away. The doctors told me last Monday that my cancer is in remission. That doesn't happen with pancreatic cancer, but it has happened with me. One of the things that has given me the determination to keep fighting this was the remarkable outpouring of support from so many people. Letters and phone calls and visits. It's hard to just roll over and die when people are saying, "Doug, don't." My wife and I saw my teenage niece, who has Down's syndrome, at a Christmas party. She came over to me and asked, "Who are you?" I said, "I'm your Uncle Doug." She answered, "Oh, yeah, Uncle Doug, I pray for you and your liver every night." Then she dropped down on her knees, clasped her hands, and said, "Uncle Doug, please don't die!" I told her I was doing my best not to.

I assure you that this support has made a difference. This experience has been a wonderful thing in many ways. It has certainly expanded my faith in God, in my fellow man, and in the inherent goodness in all of us. It's been a wonderful opportunity in that respect.

That's a personal note, and I hope that it will not be a part of future lectures. However, I wanted to talk about it this time. I decided right at the beginning of my illness that I wasn't going to make this a closet disease; I was going to be open about it. If it's going to have a purpose, which I hope it does, then that purpose will only be felt if I make a conscious effort toward that effect. The sad truth is that there are people dying all over this world that do not affect us. We shrug, pass on, and we look at the comics in the paper after we've seen a photograph of a soldier being shot in the street in Zaire. We see people dying of starvation, children with swollen bellies. We see the winos here in Savannah. Last night, as we walked back to the hotel, there were three winos lying on the benches in one of the squares. We walked by, shaking our heads a little bit, asking, "Why do people do that?" And we passed on. We don't really develop compassion until something hits somebody that we care about. That is when we learn to care, and that is where we get the resolve to change things.

Changes for Children

In NASDTEC we are changing some things in the way we deal with children, and we're learning to care about them in ways that I think we haven't in the past. Let me return to cancer for a minute. My cancer started to grow about three years ago, the doctor said, with a little mutation in a cell in my pancreas. That cell lost control. There's a normal brake on cell division—a certain cell will divide a number of times until it reaches a certain mass in association with its fellows, and then the division stops. In cancer, that brake is lost, and the cells keep dividing, and dividing, and dividing. Another thing cancerous cells lose is adhesion with other cells. If you pull on your skin, it holds together because there is adhesion between those cells. In cancer, that adhesion is lost, so that cells break loose, start migrating around the body, and then settle somewhere else. In my case, I have pancreas tissue in my liver, I have it in my thyroid, and I have it in my lungs and other organs—much more pancreas than any person would want or need growing around in my body and just having a marvelous time doing so. So, it's a lack of control and a lack of adhesion. As those cells grow and spread, symptoms begin to appear. The symptoms, as I look back now, were visible about two years ago, but I explained them away. I was getting tired, but I thought I wasn't getting

enough sleep, wasn't eating properly, all those kinds of things. Then the day came when it could no longer be ignored. In my case, there was a prompt, targeted response.

Now let's think about child protection. The same kinds of events happen. We have people who mutate somehow in their relationships with others. They lose the adhesive property not only with other adults but with accepted standards of conduct. There's something wrong and we see the symptoms, but we explain them away. We come up with some other explanation; that is a perfectly natural response. In my case, with my cancer, there were a lot of reasons that were much more understandable than that I had a terminal illness. In the case of teachers, principals, superintendents, and others, we have situations where we see the symptoms, but there are a lot of explanations that fit the situation much better than an allegation of serious professional misconduct.

Cancers in the Schools

I have a newspaper article with the headline "Model Teacher Admits to Molesting a Boy." We wonder, "Can a good person really do bad things?" Here we have a seemingly model teacher, 56 years old, who had been fighting for the rights of disabled children, working with kids, taking them to programs, and just doing wonderful things—a very dedicated, hard-working teacher. Then it turns out that he also had been sexually molesting one boy for a period of years. I understand from some of the people who were involved with the investigation that over 50 other cases have now come to light involving the same teacher. This man's behavior mutated, causing a loss of adhesion to established standards of conduct and allowing him to do terrible things to innocent children. Whether such mutations arise as a result of some unique situation or stress, or whether they are part of a well-established pattern of behavior where the person has been a predator for years, the effect on the child victims is the same, and we cannot allow it.

Once we've identified the growing cancer in our schools, what do we do about it? The traditional response is to explain it away, to shift the blame to the child, to say, "It's a special circumstance here; we can move the teacher, and it probably won't happen again. The teacher is a good person and couldn't have done anything really bad. It was a misunderstanding; it will be cured; it's a temporary aberration." All those answers are described in one of Murphy's Laws, which says that for every difficult, complex question, there is a simple, easy-to-understand answer—except it's wrong. Sexual molestation of children doesn't "cure"; moving a person from one setting to another doesn't resolve

the problem. One large, longitudinal study examining recidivism among people who sexually abused children found that in a large percentage of cases, the second arrest came as many as 10, 12, or 15 years after the initial one. Does the fact that there was no arrest during that period mean that the molester was not molesting anyone? Nobody knows. The reporting that we get on these cases is extremely low, and the tendency of people to cover up these situations in some way is very great, as is apparent in this particular case. The superintendent involved in this situation explained away his failure to act earlier by stating, “He’s been such a good teacher” and other similar comments.

One of our NASDTEC colleagues mentioned to me that a woman had come forward to report that 20 years ago she had been molested in junior high school by two teachers. The molestation had been quite extensive, and our colleague, to his credit, initiated action against those teachers. He sent them letters. One of the teachers was still active as an educator in that state; the other had moved to a different state. The active teacher called our colleague and asked, “What are you trying to do? What is this all about?” Our colleague responded, “The letter explains it all; it’s about the molestation of this girl.” The man said, “Yeah, but that was 20 years ago; things were different then.” Our colleague was taken aback, “You mean it was okay to molest a little girl 20 years ago, but it’s not okay now?” The teacher responded, “Yeah, times have changed.” The tragic part of that reply is that it’s true. Not that it was really okay, but we weren’t concerned. I certainly wasn’t. I didn’t believe such things could really happen. I didn’t think that good people could do bad things to children; that was something that dirty old men did. You warn people about strangers and try to keep children away from them. But it more often is not the strangers who hurt children the most, it’s the friends. And betrayal by a friend or family member is so much more damaging. It’s easier for a child to recover from an attack by a stranger than by a friend, because if your friend hurts you, you no longer have a safe haven. We all need a place where we can go to let our true selves out, if you will, to take off our armor and be with people we trust and know that they are not going to betray that trust. We need a place where we can let our defenses down. If we are betrayed by a friend, by a family member, by a teacher, we lose that safe haven, and the effect of that is terribly destructive and lasts a lifetime.

A New Moral Code

Today we are attacking the problem of child abuse on two fronts—both the moral front and the legal front. People often think that society is deteriorating. I don’t believe that. We are a much more moral people in many ways than

we have ever been. Many of the things that we see as problems today were ignored before. For example, traditionally children could be sold and even killed by their parents without any repercussions at all. But children today are persons under the Constitution. As another example, my wife and I have lived in our present home for 26 years. When we bought the home, there were covenants with the title, a couple of which had been marked “Void.” They were voided because of a U.S. Supreme Court case that had taken place just shortly before. Those covenants said that I could never sell my house to a person of color. Such covenants were common on property descriptions until about 25 to 30 years ago. The change is recent, and when it was made, we became a more moral country.

Another recent change on a broader scale relates to the term *rule of thumb*. What was the rule of thumb? Where did that come from? The term *rule of thumb* refers to the right of a man to beat his wife. The reasoning behind it was that when people became married, they created a unity. That’s why women gave up their names and gave up their property rights to their husbands and all the rest of it. The man and woman became a unity—the two became one flesh; that’s even Biblical—and a unity needs only one voice. Whose voice is it going to be? The men figured it might as well be the husband’s. If one part of that unity started to break away and violate that unity, it had to be brought back in. So if the husband were to beat his wife with a stick no larger in diameter than his thumb—it didn’t matter how long it was—then it was okay. If she were injured in the course of that, it was all right because it was a legal beating, meant to preserve the unity.

The rule of thumb held through the 1800s and into this century. If it were not for the push of the Equal Rights Amendment, which finally forced full recognition of women as persons—a big surprise for a lot of people—by bringing women fully under the protection of the 14th Amendment, we’d still be having problems with that rule. The 14th Amendment says no person shall be denied life, liberty, or property without due process of law, nor shall any state deny any person within its jurisdiction the equal protection of the law. What’s a person? Historically, persons were white, male, Anglo-Saxon Protestants who also owned property. That was the definition of a person when this nation was born. Since that time we have changed the definition and we’ve expanded it to include people regardless of color, gender, or property ownership, and we are beginning to include people regardless of age or disability, based on the Americans with Disabilities Act. The big debates now over the 14th Amendment, asking “What is a person?” are on the two extreme ends. “When do we become a person?” That’s the debate over partial-birth

abortion or any abortion. On the other end, “When does one cease being a person?” is the debate over assisted suicide. All of these examples reflect changes in public morality, where we as a culture have tended to expand our view of personhood to make it more inclusive, to draw in people instead of shutting them out.

The Impact of Law

As our moral sense changes, the legal front changes, and the law is becoming a very effective tool for protecting children. In the legal arena, the changes reflect three situations, all asserting some form of negligence. The first is negligent hiring, the second is negligent retention, and the third is failure to warn—in other words, relating to people coming in to the profession, staying in, and leaving the profession. The elements of negligence are 1) you’ve got a duty toward someone; 2) you act in a way that is contrary to the standard that should be expected of a person in your position, knowing what you know or should have known; and 3) as a direct result of your failure to act in accordance with that standard, there is some kind of harm that a reasonable person should have foreseen. Those three main elements, together with the considerations of causality and the foreseeability of the harm, are what constitute a negligence suit.

Hiring Standards

Background checks. With respect to the hiring, the “coming in,” issue, we are increasingly addressing that with background checks. NASDTEC has been right at the core of this issue. We have 27 states that are now requiring fingerprinting. We don’t have the data yet for our new NASDTEC members, but we now have 10 states that require fingerprinting prior to hiring, 10 that require it prior to certification, and 7 states that require fingerprinting both at certification and at hiring. There are 2 states that will have fingerprinting within the next two years, 1 that says it will not have it within two years, 17 that say that there is not even a policy regarding fingerprinting, and 2 states that have rejected the idea of using fingerprinting at all. However, we’ve more than doubled the number of participants in fingerprinting over the last five years. That’s wonderful progress for the protection of children, but it’s a problem where fingerprinting is not done and there are worries about protection against negligence suits. Why? Because negligence looks at the standard of care. If the standard of care is growing to include fingerprint checks and more thorough background checks, where those checks are not done, the ability of a challenger to run a successful negligence suit is enhanced. So vulnerability increases where there is a failure to move into

that kind of investigative technique. Moreover, states that do not conduct fingerprint and background checks will inadvertently attract persons with backgrounds to hide.

One of the downsides with fingerprint background checks, however, is that people assume it covers all bases. If a fingerprint check comes back negative, then hooray, there is nothing to worry about. Wrong! Fingerprint checks only report criminal convictions and sometimes criminal arrests. I assure you that does not cover all the criminal activity that occurs. We don't begin to get all of the bad elements of society on fingerprint checks. We get a lot more than we would otherwise, but we don't get them all. We can't rely simply on fingerprinting. Many states also limit their response only to those charges reported as felonies. States will revoke or refuse certificates for people charged with felonies, but they let in people who have been charged with misdemeanors. How many states have plea bargaining? What happens in a plea bargain? Charges are reduced and dismissed. Take this model teacher from the newspaper article, for example. They could file any number of charges, major felonies, against him, but he'll probably plead it down to a second- or maybe a third-degree felony. Since he's such a model citizen and this is a first-time offense (where he was caught . . . certainly not a first-time offense against the primary victim or other children), they could even possibly plead it down to a misdemeanor. We should look at the way the criminal justice system labels charges and ask, "What is the effect of this policy on the children?"

Our job is to protect children. The benefit of the doubt needs to go to the child. We are not in the business, once we have ascertained that an event actually took place, of protecting the applicant or certificate holder. Our first task, then, in terms of protecting both the child and the educators, is to encourage reporting and then to determine whether the alleged misconduct actually took place.

Reporting and response. As we increase our efforts to encourage reporting and our effectiveness in acting on those reports, the frequency of false reports will probably rise, and the importance of careful investigations, reviews, and hearings will increase. Again, once we have determined that an educator actually did betray the trust that had been placed in him or her, then we need to shift our focus to the child, and that is where our focus must remain from that point on. We too often focus on the other side. Let me give an example. I use a lot of Utah examples, not because Utah is particularly bad, but because then I don't have to point fingers at anybody else. I single out problems in my state, but I assure you the problems are typical of problems nationwide.

We had a football player from a Utah university that had a very good football team. The player had earned his PE certificate and was coaching football in a Utah high school. He was married and had one or two little children. In order to fill out his schedule they appointed him to coach softball, which in my opinion is much better than having him coach math. As an aside on that particular topic, allow me to share an anecdote. My son was in an AP chemistry class one day when they heard noise and shouting and things being tossed around in the lab next door. My son's teacher went into the lab, and this young lady—the teacher—was just standing there watching the kids in amazement, and the kids were running around, throwing things back and forth, and just having a great time. My son's teacher said, "What in the world is going on here?" and the other teacher said, "Well, I'm trying to teach a chemistry lab." He said, "This is not the way a chemistry lab is taught. Have you ever had any experience in a chemistry lab?" She replied, "Well, no." So he said, "Why are you teaching chemistry?" "Well, I'm the girls' volleyball coach, and they needed to have another class for me. Since I took a biology class in college, they thought that was pretty close to chemistry, so now I'm the chemistry teacher." Every state has similar stories, I'm sure. Over 60 percent of the secondary teachers in this nation are coaching or advising at least one extracurricular activity, and as one of our associate superintendents told me one day, "Doug, if you are teaching math and you are also coaching football, you can bet your booties that when you go home at night you are not going to find five pages in the newspaper about math."

Anyway, to return to the football coach, this teacher coached football for a very successful team and also coached the girls' softball team. He started to have some problems with his wife, so he turned to those people with whom he was most involved, namely, the kids. He got to be pretty good friends with some of those softball players—such a good friend that one of them got pregnant. When that happened, he was really sorry. There was a Mormon church leader, J. Golden Kimball, in the 1930s who had been a mule skinner when he was younger, driving mules from the mines, and he developed a very colorful vocabulary. As he got older and became active in church leadership, sometimes that vocabulary would erupt; he'd be giving a speech, and some would slip out. Someone asked him one day "Golden, aren't you afraid that they're going to excommunicate you from the church for some of the things you said?" He replied, "Hell, they'll never excommunicate me, I repented too damn fast." This coach also repented really fast; he said he was sorry and that he'd pay the child support. He and his wife went to counseling and they reconciled, but the school district fired him anyway, and we took his certificate away. The football team parents circulated a petition, signed by almost every

parent of the players on the team. They said, “Look, he said he’s sorry. He’s been a good coach. What’s it going to do to him? More importantly, what’s it going to do to the football team this fall and especially to those guys who are seniors? They’re not going to be able to get those scholarships and beat those other teams.” Nonetheless, the school district wouldn’t reinstate him and we wouldn’t return his certificate. He applied for a job in a neighboring state and the school district there really wanted him, but they couldn’t hire him if his certificate had been revoked. So they wrote us a letter asking, “Would you please reinstate his certificate long enough for him to get his certificate in this state, because we need a coach?” We replied, “We think that if this man is unfit to teach in Utah, he is not fit to teach in your state either. If you want to hire him, you do it on your own, but we are not going to assist in that process.” And so we didn’t.

Scope of checks. One of the other problems that comes up with background checks is the scope of the checks. For example, no criminal charge was ever filed against this coach, so there was no conviction. The girl was over the age of consent, which at the time was 14. (We have since changed the age of consent so that now in Utah a child under the age of 18 cannot be considered to have consented to any kind of sexual interaction with anybody who’s in a position of trust. So we fixed that one as best we could.) If you do a fingerprint background check on that coach, therefore, you won’t find anything.

Similarly, fingerprint checks may not be comprehensive. A lot of checks are limited to state criminal identification checks, instead of the FBI checks. There are two reasons for this limitation: one of them is cost, the other is turnaround time. In-state checks tend to be quick and fairly inexpensive; FBI checks take longer and are more expensive. The FBI has indicated that it will soon have a very rapid turnaround procedure, and we will be able to get those data almost instantaneously. The target was to have a system, by the end of the century, where an officer in a squad car could insert a person’s finger or hand into a scanner, the digitized information from the scan would bounce off a satellite to the FBI building in West Virginia, and the information would bounce back to the officer, who would have a printout of the rap sheet on that person within five minutes. Technologically that’s feasible. It’s “doable” today. Is it doable in terms of actually having the national will to do that rather than something that is politically more attractive? Well, in Utah this year we were deciding whether to rebuild the interstate and fill in potholes or to buy textbooks and other school materials, and I don’t think the outcome will be a surprise. We lost \$10 million for textbooks, but we are going to have

very fine roads. In fact, if people want to come out and visit and drive on those fine roads for the 2002 Winter Olympics and bring lots of money, we might be able to finally buy those textbooks.

In any event, the fingerprint checking system is getting faster. One of the things that is being done today to speed it up is digitized reading of the fingerprint cards. Instead of having a technician sit down and manually input the information from the fingerprint card, the technician scans the card into a computer, and the computer puts the information on a screen with the identification points noted. The technician then simply looks at the screen and the card to double-check the accuracy, and then the fingerprint data are filed. These files can be read almost instantaneously. The next step will be direct hand scans and finger scans, eliminating the intermediate step of fingerprint cards. The equipment for that costs about \$75,000 per unit. I think that as this technology spreads, we are going to see both the accuracy and the availability of the systems increase, and the costs will drop significantly, but for now, the delay in getting reports back is still a problem. Another question we are debating is whether we want to make the checks prospective only or retrospective, and I guess the biggest problem there is the burden of processing all of those requests.

What we need to do upon hiring people is to check more carefully. Fingerprint checks are becoming the standard, and all states need to move in that direction. We also need to use the NASDTEC Educator Identification Clearinghouse and not simply file the data in a drawer. Checks of references are also important; we need to look beyond simply whether a candidate is qualified. In the past we tended to concentrate mostly on whether the classes the candidate took met our course requirement. We need to look beyond that. The course requirement in and of itself is interesting. When I was in elementary school, we learned about the Dutch East Indies, the U.S. possession called the Philippines, and another U.S. possession called the Panama Canal. My kids learned about our friends in Iran and Iraq. We all learned about the Soviet Union, but whoever heard of Bosnia? We knew about Yugoslavia, but Bosnia? Content changes over time, which is not to say that it's not important, but the quality or worth of the individual is something that we ought not overlook in our evaluation of applicants. We need to ascertain not only that applicants are qualified but that they are fit to be in a classroom as well.

Retention Standards

In terms of staff retention, once we hire the people, one of the questions has been if we should do subsequent fingerprint checks to see if a person has engaged in questionable conduct after coming into the profession. That's been a very difficult question. Gene Campbell reported during this NASDTEC conference that Colorado now has an arrangement whereby a flag is attached to Colorado educators' cards so that if a report should subsequently come in and hit one of Gene's flagged cards, he gets an automatic report. It isn't necessary for him to roll another set of prints and submit them again. Because he gets an automatic return, the initial cost is a little more expensive—\$38—but if you look at the cost of having another search done from scratch, in the long run it is going to save both time and money.

When we do receive a report, it's important how we deal with it. In the case described in the newspaper article, no action was taken against his certificate until the teacher plead guilty. We shouldn't wait for that. The outcome of a criminal trial is irrelevant to the outcome that should come in the administrative process relating to certification. In the first place, the standards are different. People do not get convicted or have charges dismissed based on the danger they might pose to children. The way those charges are handled depends on the strength of the prosecutor's case, the vulnerability of witnesses, and the caseload that the prosecutor is trying to carry. That's why charges are plead, dismissed, or plea bargained; it has nothing to do with potential danger posed in schools. The standard of conviction in a criminal trial is also different—"beyond a reasonable doubt." In the administrative process, it's preponderance of the evidence . . . or it should be. Lawyers should not be allowed to push that standard up to "clear and convincing." The standard in administrative procedures is "more likely than not," "preponderance of the evidence," the "51% standard," or similar evaluations. That standard is the one that traditionally has been associated with administrative hearings, and it has been upheld repeatedly by federal courts, up to and including the Supreme Court, and by state courts all over the country. Think of what we saw in the O. J. Simpson trials—they weren't only great theater, they were good education. Think of the differences between those two trials. In the criminal trial, the standard was "beyond a reasonable doubt," and there were tight restrictions on the type of evidence that was permitted. That wasn't because Judge Ito was not doing his job properly or was being too picky; it reflected the standards that are imposed on criminal courts by the way our jurisprudence has evolved. On the other hand, in the civil trial, all kinds of evidence was admitted that was disallowed in the criminal trial. Not

surprisingly, the civil jury convicted Simpson, using the term *conviction* in a loose sense, where the criminal jury had found him not guilty. The difference was not only in the juries and the judges, but even more importantly, it was the difference in the standard of proof and admissibility of evidence. As several members of the criminal jury said, if they had been bound by a lesser standard, they would have convicted Simpson, but they had to deal with “beyond a reasonable doubt.” The civil jury only had to find preponderance in the evidence.

It is very common to find that the administrative process will result in a conviction when the criminal process will not. Therefore, if administrative decisions are based on the outcome of a criminal trial, then first the administrative threshold is too high, and second, the basis for your administrative actions may ultimately collapse. Why? In this newspaper case, the guy plead guilty to a lesser charge. When you plead guilty, the courts have held that it does not mean that you actually committed the offense. That sounds strange, but let’s personalize it, and then it won’t sound quite so strange. When you last drove your car, did you break the speed limit? I’ll bet that you did, unless you were in a traffic jam—that’s the only thing that seems to keep people from breaking the speed limit. I used to be a cop, and I rarely gave tickets to people who were guilty of speeding. If they were, they had a good excuse: “I was in a hurry, officer”; “My speedometer is broken”; “I didn’t know if my speedometer was accurate”; “Everyone else was driving the same speed.” If you get a ticket, you go to post bail, which means you have a right to a trial, but you don’t go to trial. You default and are convicted on the basis of your failure to come back in to contest the ticket. Does that mean that you were actually speeding? Not necessarily; it just means you posted bail and didn’t go in to contest it, so there is a conviction. I might plead guilty to a crime because I am told by the prosecutor and even by my own attorney, “Hey, they’ve got some stuff that looks pretty sticky. If you go forward with this thing, you may get convicted and spend ten years in prison. Not only that, I’m charging you \$200 an hour, and it is going to take a bundle of hours for me to defend you. On the other hand, if you plead guilty, we can get this whole thing done for \$1000, and they will probably put you on probation and you won’t pull any jail time.” “OK, I’m convinced. I’ll plead guilty.” That’s why a guilty plea can’t be reliably used as evidence that a person actually committed the offense for the purposes of some other kind of action. We have had instances here in the United States of certification actions that have collapsed because the basis for the action was a criminal conviction based on a plea of some kind. The administrative action was undermined by the appeals court when the conviction was challenged by the individual’s saying,

“There isn’t any proof I did that; I plead guilty for an entirely different reason. It had nothing to do with whether I actually committed that crime or not.” We should not base our administrative actions on other entities’ findings; we should instead base our actions on our own findings.

Warning Standards

The duty to warn is a new type of requirement that is evolving. An example is a recent case in California. I hope it will be upheld; it was just decided in the court of appeals. In this case, a school district had a teacher who’d committed a sexual offense against a child. The teacher left the school, and the school gave him one of those wishy-washy recommendations. He went to another district, was employed there, and committed similar offenses. That district then found that the first district knew about this potential and had not relayed the information. Instead it had given the teacher a recommendation so the guy was hired “downstream.” Traditionally, there has not been a duty to warn people downstream, outside of a school district, or outside of a state. The emerging law is that if someone can reasonably anticipate a potentially dangerous person would be able to get a job and have access to children again in another jurisdiction, and that someone fails to provide an adequate warning, then that someone can be held responsible. In the California case, the appellate court is allowing the case in a tort claim to go forward, saying there was a duty to warn. I find this new mentality extremely helpful.

Many people have received inquiries from one of the national TV shows recently looking for information on 170 names. I think Paul Longo of California said he got eight hits on just one of those names, so he’s really hesitant to release information because of the potential for incorrectly identifying on the basis of a name alone. Nevertheless, I find those kinds of media inquiries to be helpful. In Utah we tried for years to get fingerprint background checks through our legislature. We were unable to do so until we had the case of Demar Nielson, who had been convicted of a sexual offense against a child and was subsequently hired by a school district that didn’t have the ability to look into his prior convictions based on a fingerprint check. When the district called his previous employer, the reports were that he was okay. It turns out that he had jumped from employer to employer, first going to private schools, where certification was not required, until he was able to get his certificate back because he had supposedly been cured by a social worker. Then he went back into the public system and finally came back to Utah. So when the school district called the references, he was clean. Ten years after the first conviction, he was again accused of molesting

a boy. When he found out the charge was going forward, he quickly hired an attorney and had the earlier charge expunged. A police officer in the city where the original conviction took place reported the situation to a local TV reporter. Nielson sued for defamation and invasion of privacy.

Now, this is an extremely important case. Why do previous employers not report problems or give accurate references? They are scared to death that they are going to get sued. However, the courts are extremely protective of educators and education. You will rarely find a case successfully moving forward against an educator where you will have a conviction. It's not hard to file a suit. One aspect of American society that keeps lawyers busy—and it's nice because they would get into mischief otherwise—is that anybody can sue anyone for anything at any time. But that does not imply a right to win. There is the right to file, but not a right to win it. In this Demar Nielson case, the Tenth Circuit Court of Appeals said, "Mr. Nielson, you don't have a right of privacy in criminal behavior. You've been molesting little boys; you can't wipe the brains of everybody who knows about that. You can expunge the criminal conviction, meaning that it's not going to have any more legal effect after that time, but you can't prevent people from talking about it. You don't have a right to privacy in this behavior." When you report information to someone who has both the right and the need to know it, when you report to people downstream, when you report to the Clearinghouse, or when you report to another state, you have a privilege that allows you to make that report without fear of losing invasion-of-privacy or defamation suits.

For Better Health

In closing, let me express my appreciation to everyone for the support given to me this past year as I have had to confront my health problems. I would also like to encourage everyone to provide similar support to school systems to help them diagnose and confront their health problems. We need to examine what other states are doing and compile a set of best practices. We need to use the presence of NASDTEC to disseminate such information quickly and widely. We need to be rigorous in identifying and implementing ways in which we can better remedy—and ultimately prevent—the cancer of child abuse in our schools. Our job is to educate children, and our responsibility is to protect them. We must resolve to change what is currently wrong, and we must be courageous and tenacious in that pursuit.

Second Annual Doug Bates Lecture, 1998

Let's Kick It Up a Notch

Paul M. Longo

Relating to Our Role

Everyone in today's audience has traveled to South Dakota; now take another trip with me. Travel with me back to when you were 8, 9, 10, 11, or 12 years of age. Think about your surroundings and how you were feeling at that age. Think about what impressed you, what didn't impress you; what embarrassed you, what didn't embarrass you. Think about how you felt as a youngster—sometimes afraid to speak, searching for praise from adults, being absolutely allergic to any sort of criticism, worried about being humiliated. Think about the role played by the authority figures around you and about how they made you feel.

Who were the important authority figures in your lives? Clearly, your parents—and the other adults in your life—your other relatives, your pastor, your coach, your teachers. Think about the role they played and how important their view of you was to you.

Now, given the role these adults—and teachers in particular—played in your youth, formulate your expectations concerning the behavior of these individuals. That formulation will, I assert, dictate the kind of professional practices program you run, sponsor, support, or urge in your respective jurisdictions. It's important, when you're considering the kind of program you wish to establish or improve, for you to remember that you yourself were young, impressionable, and vulnerable. You can identify with the children in your schools in so many respects. Now they quietly count on you to protect them.

— Paul M. Longo, National Affairs Liaison at the California Commission on Teacher Credentialing, is an attorney and the Chair of the NASDTEC Professional Practices Committee.

Only a Few—But Too Many

I want to say right up front what I've always said before, which is that when we talk about NASDTEC Professional Practices and bad actors, we're talking about an infinitesimal percentage of educators, be they teachers, administrators, guidance counselors, whatever. They represent an infinitesimal number, but those few can do incalculable harm to tremendous numbers of children. It's important that we construct as many safety nets as possible because we were the children once, and it is our responsibility to remember how we were then and how children look up to us today.

What is it that we fear most, about what type of misconduct are we most concerned? It is molestation—the nightmare of child molestation. I have often referred to schools as “target-rich environments” for child molesters. Moreover, those predators who seek such perverted satisfaction do not respect state boundaries when it comes to seeking those “target-rich environments.” So even if we do a creditable job in California, that doesn't serve to protect other children in other jurisdictions. Like it or not, we're all in this effort together. To brag about one program and criticize another program is to live in denial. Inevitably, there will ensue what I call the “lawsuit scenario.” Colleagues will contend that they don't really have bad actors in their state—you know “California has all the fruits and the nuts, along with a few other large states and large cities, but we're okay in our jurisdiction.” While we are in this state of denial, a child or children will be molested by an educator. Criminal charges will be filed, and there will be a conviction. The parents of the victims will decide to sue the school and/or the state for licensing somebody they should have known was, in fact, a convicted child molester in another state or, worse yet, in the home state. There will be a civil trial and a verdict for several million dollars. Somebody in the legislature will wake up and publicly conclude that for several million dollars he or she could have established a professional practices program . . . and not only established the program, replete with the appropriate screening and monitoring, but also taken political credit for the effort. Politicians like to take credit for popular things on which everybody agrees.

So now a program is funded, and it is your responsibility to establish a program that works. Money may be thrown at you, but along with a funded program comes substantial responsibility. Historically, that's the way many professional programs have been evolving. But no program is successful 100 percent of the time; no matter how many screens you put in place, things fall through the cracks. The best systems can fail, and one failure can cost you your job. Politicians also like scapegoats. It's that plain and simple.

Crossing Boundaries

We had a situation in California several years ago where an individual moved into our state from Florida. He was hired by the San Diego City school system, where he proceeded to molest children. The parents of the children sued San Diego City Schools. San Diego City Schools said, “Wait a minute—don’t sue us, it’s not our fault.” It got personal because the head of the personnel department at San Diego was a friend of mine with whom I had taught several years earlier. He and the district alleged that it was Paul Longo’s fault. It was the district’s position that this molester should never have been credentialed by the state of California, given his prior criminal record in Florida. So San Diego’s lawyers, of course, included the California Commission on Teacher Credentialing (CCTC) as a defendant in the civil suit brought by the parents.

Now we at the CCTC think we do a pretty effective job of screening applicants and certificate holders, but this guy had gotten through the net. To make a long story short, it cost us \$100,000 in legal fees to explain and defend ourselves and our processes. Many of the members of our staff were deposed, and the judge ultimately concluded that we had done our job and there was nothing else we could have done; we were dismissed from the lawsuit. San Diego, on the other hand, might have inquired of Florida about the individual that they were going to hire. It turns out that it wasn’t Florida’s fault either. What had happened was that this guy, after being convicted, had struck a deal with his employer and resigned. The fingerprints taken incident to the Florida arrest were sealed as part of the criminal plea bargain. Accordingly, the prints never made it to the FBI, and our search revealed no prior criminal conduct.

As a result of that experience, we started sending out the forms that irritate so many educators. We instituted the “VGS” or “Verification of Good Standing” forms because we thought that would provide one more layer of scrutiny and protection. These forms ask if applicants for credentials in California who held credentials in other states remain in good standing with the discipline arms in those other states. Of course, compliance with this process by other states is purely voluntary.

Defining Conduct and Repercussions

What range of behavior might we wish to consider to be undesirable in teacher candidates or credential holders? From murder and molestation to petty theft, it is your chore in your jurisdiction to determine the standards to

which your educators are to be held. Are your educators to be construed as role models? Is that a fair burden to place on teachers when that responsibility may not be expected of other professionals? If you decide that educators should be role models, then the conduct bar is significantly higher than if you decide that the only people who are unfit to teach are people who have committed felonies. This is an important issue. We need to think in terms of what's going to happen when somebody is convicted of an ugly misdemeanor or plea bargains a felony charge down to a misdemeanor. If he or she gets in trouble again, having been previously cleared by your office because you adhere to a felony standard—as opposed to a misdemeanor or even uncharged misconduct standard—how will you explain that lower standard to the victims, to the victims' parents, and to the press?

Having determined what constitutes inappropriate conduct, you must establish a range of possible adverse or disciplinary actions. In other words, I'm certain that no state or board of education would be comfortable with either revoking or not revoking the certification—all or nothing. There needs to be a range of adverse actions, to allow for flexibility in dealing with each matter.

In California, we start with what's called a “private admonition.” It consists of a letter to the respondent, signed by me, and placed in his or her personnel file. Much like the tape from the old *Mission: Impossible* TV series, this letter self-destructs after three years—as long as there has been no subsequent misbehavior—and disappears from the file.

The next level of disciplinary action is a public reproof that, unlike the private admonition, is placed on our All-Points Bulletin and on the NASDTEC Educator Identification Clearinghouse Report. Thus, there is some publicity attendant on the action that we've taken in these situations.

We then escalate to a suspension for a finite period of time, during which the respondent may not be employed under the credential and may not be paid. Our last recourse is a revocation—the loss of the credential. Both the suspension and the revocation are, of course, publicized.

The Clearinghouse Resource

One of the questions that comes up regularly is why, in fact, some incidents that appear on California's All-Points Bulletin don't seem to appear on the Clearinghouse Report. I think it's important to understand that there are a number of variables in every state that may contribute to this perceived anomaly. We put only final actions of the CCTC on the Clearinghouse Report,

whereas we include interim actions on the All-Points Bulletin. Additionally, the CCTC meets at a certain time every month. Due to the timing of final actions and the periods of time during which individuals may appeal, some reports will make it to the Clearinghouse but not on the APB, or vice versa.

Allow me to stress on behalf of the NASDTEC Professional Practices Committee and the people who manage the Clearinghouse that the Clearinghouse is not a universal solution. To expect the Clearinghouse to be the panacea for your license discipline problems and to expect the Clearinghouse to provide explicit detailed information is unrealistic. The Clearinghouse is nothing more nor less than an invitation to pick up the telephone. If you see an indication on a Clearinghouse Report that somebody had an action taken against him or her in another jurisdiction, you pick up the phone and you call. That state will give you whatever information their individual laws, rules, and regulations will permit them to relay.

In fact, it's come to our attention that some jurisdictions may be parading the Clearinghouse around as if it is their professional practices program. The result is that they're demanding amazing amounts of information from the Clearinghouse Report. The Clearinghouse is not a professional practices program, and if someone is using it in that manner we're all in trouble. If you're taking the Clearinghouse Report and representing to your people that they're paying NASDTEC dues and receiving regular Clearinghouse Reports and, therefore, everyone is safe in your respective jurisdictions, there is a problem.

By design, the Clearinghouse can only alert you to the problems people have had in other states. It is certainly not advising you of what may be happening in your state. Moreover, if you're not looking hard at what's going on in your state, then the Clearinghouse is not benefiting from that information that you aren't submitting to the Clearinghouse. It is important to understand the Clearinghouse's strengths and also its weaknesses and to use it appropriately in accordance with its design.

Assessing Consequences

Continuing with the idea of a range of misbehavior and the attendant range of adverse actions, those considerations will lead you to the kind of program that you may operate in your particular state or jurisdiction. California's program is what I refer to as *jurisdictionally driven*. If a person holds a license and there is a jurisdictional basis for us to investigate, then we may take adverse action against that license. There's another system—the “offense-

driven” system—where the nature of the misconduct itself confers or does not confer jurisdiction. There are strengths and weaknesses in both models.

Roughly speaking, in our system, we acquire jurisdiction when somebody has been fired or dismissed from school employment, when they have committed a criminal offense of some kind. Additionally, any individual citizen of the state may file, under penalty of perjury, an affidavit attesting as to firsthand knowledge of misconduct. On the one hand it is a useful tool because sometimes the misconduct for which you might deny or revoke a license may not be criminal and may not have resulted in an adverse action at the employment level. By the same token, such an avenue can be abused by people, and sham complaints can be filed. Accordingly, we devote the majority of our investigators’ time to weeding out the genuine from the baseless or trivial allegations in affidavit cases. In any event, so long as we acquire jurisdiction in one of those ways, we may proceed. Other states automatically acquire jurisdiction when an offense has been committed and do not review cases unless there has been criminal misconduct.

Under either model, nexus plays a crucial role. Legally, nexus may be defined as some sort of articulable relationship between the alleged misconduct and the duties required to be performed under the credential or certificate sought or held. Put more simply, it questions whether a person’s misconduct had or could have an effect on children. As an illustration of the concept, if you determine that a single incident of drunk driving does not possess the requisite nexus, then you may not take adverse action against that person’s credential. If, on the other hand, there were six drunk driving convictions in a two-year period, none of which involved children, you may need to consider if that individual has a problem with alcoholism, and if so, whether or not that’s going to affect the person’s ability to teach in the classroom. I think that the law permits you to make some reasonable assumptions in that regard, but do not underestimate the significance and legal importance of establishing nexus in these cases.

The Fingerprinting Question

Regardless of whether your program is jurisdictionally driven or offense driven, it will not be effective unless and until fingerprinting is an integral part of that program. I have been proselytizing for years about the need for fingerprinting, and I cannot for the life of me understand the opposition to this most elementary level of protection for our students. I have been fingerprinted a number of times, and on none of those occasions did I feel like a criminal or did I feel that my privacy was being invaded. I simply do not

understand that mentality. If rolling a few prints can prevent, one, two, ten, a hundred, a thousand children from having their lives ruined, bring on the ink. Bring it on. I've confronted some people in official and unofficial forums on the issue, and to this day I can't come up with an argument even as a lawyer—and you know that for money a lawyer will argue anything—even as a lawyer, I cannot comprehend the argument against fingerprinting for those entrusted with the care of our children.

In California we fingerprint an educator candidate prior to student teaching. What's nice about our system—and what I'd urge all states to try to replicate—is the maintenance of prints on file and “subsequent arrest notification” from the California Department of Justice. For example, if Paul Longo, who has a teaching credential, is arrested, his prints will be taken incident to that arrest. Those prints are then sent to the Department of Justice and the computers start whirring. As they're whirring, they register the fact that I was fingerprinted before becoming a teacher, I was fingerprinted incident to becoming a lawyer, and I was fingerprinted again at my desk because all CCTC staff who handle sensitive and confidential documents have to be fingerprinted. That report is then submitted to our agency, and we are able to inquire as to the circumstances of that arrest. The process is set up by statute. We don't have subsequent arrest notification with the FBI. Prints are kept and maintained by the state. We have also come up with other identifiers in addition to fingerprints. One of the arguments I've heard against printing is that because some people do not print well or at all, no one should be printed. That's clearly a weak argument when you look at the numbers and the value of a fingerprinting requirement. Our system amounts to a day-to-day credential renewal so far as it pertains to subsequent allegations of criminal misconduct. I would urge all states to try to incorporate this feature into their fingerprinting programs as well.

One of the issues that has become important in California, especially with our class-size-reduction effort, is that of clearances for individuals at the university level. We have a lot of people leaving their student teacher programs early and signing contracts with districts that need to fill classrooms. I should point out that our system requires student teachers to obtain what we call a Certificate of Clearance prior to entering a classroom. Prints are submitted, as they are for all credential applicants, they are run against existing records at the Department of Justice, and we review the criminal record, if any, of the person whose prints were taken. We've seen our share of draft card burners as folks my age decide on a career change, we get fraternity “mooners,” and we also uncover more troublesome criminal records that may well result in the denial of the Certificate of Clearance or the credential application.

It is surprising to see the number of people who apply and who assume that our system will not find or examine their earlier misconduct. It is difficult to quantify or calculate the extent of the deterrent effect of the fingerprinting requirement. However, an individual will call us up and ask what the requirements are in California to get a teaching credential. We list the academic requirements and add that candidates need to be fingerprinted. Click, disconnect—the caller hangs up. That’s the deterrent effect. Unfortunately, that individual may be a real bad actor and may quickly move across the state line into a jurisdiction where there is no fingerprinting requirement. That’s the unfortunate reality of having some states that require fingerprints and some states that do not.

A Dilemma of Morals

I wanted next to talk briefly about my experiences in teacher education programs. I have regularly been invited to speak to student teachers on the issue of credential responsibility. I have enjoyed getting away from bureaucrats like myself and discussing issues with students who are clearly passionate about the teaching profession. As I’ve engaged them with regard to the nature of their responsibilities as credential holders and employed teachers, it has become increasingly clear to me that my values and assumptions may be inappropriate as they relate to the younger generation of teacher candidates. I’ve come to understand that a lot of these people, for whatever the reason, do not possess the moral compasses that I grew up with and now take for granted. As much as we might wish to criticize their misbehavior or poor judgment, they truly have no clue that some of this conduct is inappropriate in the teaching setting.

I don’t pretend to know what was missing or what is missing, but I am certain that these are mostly individuals who would do the right thing and who would act in a manner we deem appropriate, if only they knew what that was. One young man, for example, heard me speak; then several months later, he called to say he was employed and in trouble. It seems he had decided to download pornography from the Internet and had used the computer at the school where he was teaching to do so. His supervisor, who liked him a great deal, caught him and was going to have to suspend him. The young man wanted to know if we were going to take any action against his credential. When I asked him why he had done such a thing, he replied that he wanted the material and that he was not at home. When I asked what that meant, he responded that if it’s okay to do this at home, he assumed the same conduct would be okay anywhere. He failed to relate the location and the proximity of children to the

conduct. I would contend that this is not a bad person; he is, however, what I refer to as “felony stupid.” Attempting to explain to somebody like him why what he did was inappropriate begs the question as to why such a judgment might be second nature to us and a mystery to him. We need to get to some of these folks as early as possible to talk to them about the responsibilities attendant upon processing a credential and upon practicing the profession for which we are licensed.

I continue to believe and assert that the right to teach children in this society is a privilege and not a right. I’ll lose this argument in front of some courts and some union audiences. So be it. To argue against me on this issue is, in my opinion, to liken the teaching credential to a fishing license—you don’t need to exhibit exemplary behavior to retain your license. I am a strong proponent of due process for all individuals accused of misconduct. Nevertheless, I still believe it is a privilege to teach children, and it’s a privilege that deserves to be respected not only by those who are taught but also by those who possess the privilege—those who teach.

The NASDTEC Resources for Professional Practices

The pressure that’s being exerted by me and the NASDTEC organization for you to go forward with a NASDTEC Professional Practices program is, I maintain, much gentler than the pressure you may receive some day from a hostile parent, legislator, or newspaper. NASDTEC exists in order to educate and to enable us to help protect the children in our schools. This organization has an important role in that regard, and NASDTEC is a great place to network. The reason I entitled these remarks “Let’s Kick It Up a Notch” has to do with Chef Emeril Lagasse and a dinner in New Orleans some months ago that was incident to another NASDTEC conference. This affable chef has a cable television show and utilizes a number of unique expressions including, “Let’s kick it up a notch.” When I watch the show, I always think of my NASDTEC compatriots and the bonding that occurs at all NASDTEC functions.

The people you meet and befriend via NASDTEC will become some of the best professional friends and resources that you could hope for. Although I usually avoid mentioning names because some will always feel they deserved to be mentioned and weren’t, I would like to point out some people who I believe have been crucial to NASDTEC’s professional practices effort during my association with the same. I apologize to any I may omit—allow me to blame it on time constraints.

Doug Bates from Utah, after whom this feature is named, is a remarkable man and an inspiration to us all. Don and Janet Hair have always been sensitive to this issue and have assisted many of us in fostering its growth. Charlie Mackey from New York has been referred to as a NASDTEC legend and has been a good friend and mentor to me, as well as an invaluable member of the NASDTEC committee I am privileged to chair. Adelle Nore of Washington is a woman of notable sensitivity to the victims of educators who molest and otherwise misbehave. She and I immediately hit it off ten years ago and, together, started working on what has become NASDTEC's Annual Professional Practices Institute. Steve McGee and Don Megill, who founded ACADEM, worked very hard on the Clearinghouse process at a time when professional practices was not as celebrated an effort as it is today. I would also like to acknowledge the other members of our Professional Practices Committee and certainly the work that Tom Hall is performing with the Clearinghouse.

The children who are not victimized most likely do not know these names and the names of countless others who devote their time and skills to minimizing the risk of harm in our classrooms. They do not know these names, but we do. And we know that the people I've mentioned and all of us in NASDTEC can and do play crucial roles in this most important effort.



Third Annual Doug Bates Lecture, 1999

Teaching to Higher Standards

Charles C. Mackey, Jr.

Background

I am truly honored to present the third annual Doug Bates Lecture. Before accepting the invitation, I asked myself, “Why me?” The first two presenters, Doug Bates and Paul Longo, two longtime colleagues, confreres, and luminaries of the NASDTEC Association, are two tough acts to follow. Then I realized that perhaps I do have something to say from a vantage point not represented by my predecessors—not that of counsel representing a state attorney general’s office, nor that of an attorney and director of a teacher credentialing commission’s office of professional practices, but rather that of an executive coordinator of a large state’s office of teaching. Since I have twice served as president of this Association, have held a score of other leadership roles in this organization—especially as chair of its Professional Practices Committee—and have been a classroom teacher, a building administrator, and the director of a smaller state’s teacher education and certification program, perhaps there is a different perspective I can bring to a topic about which we all care deeply.

Before embarking on some remarks, I want to speak about Doug Bates, the person for whom this lecture is named and who is today again being hailed. My friendship with Doug and his affiliation with this organization go back some time. During our association, I have come to see in Doug Bates the embodiment of this organization. In our recognition of Doug, we choose first to recognize and highlight the importance of high ethical standards and demanding character standards for educators. Second, we honor a person who models high standards—personally and professionally—and who, with others, has helped define and give life to the dialogue on standards for audiences both within and outside this Association.

 Charles C. Mackey, Jr., is Executive Coordinator in the Office of Teaching at the New York State Education Department and a past President of NASDTEC.

Examining Higher Standards

America is infatuated with higher standards. Over the course of the past five years, I would doubt there is any state governing board for public instruction and/or higher education that has not taken up the mantra of higher standards, be it higher standards for students in our schools or higher standards for professionals in those schools—the classroom teachers, school leaders, school counselors, school psychologists, school social workers, and others. Public attention on higher standards has instigated a major reform of elementary, middle, and secondary education. One consequence of this reform, I can state with some certainty, has been the attendant reform of teaching—in the way we recruit, prepare, assess, certify, discipline, and continue to educate school professionals.

School reform has resulted in stricter graduation requirements for students, more rigorous student assessments, and, in many jurisdictions, annual school report cards. To ensure that students meet these standards, we must dedicate ourselves to structuring capacity where it counts—in the school building and, more particularly, in the classroom. The importance of good teaching cannot be overstated. There is general agreement that the efforts to raise learning standards will only work if they are embraced by caring, committed, and qualified professionals who are ready, willing, and able to help students reach those standards.

In New York, as in other states, we are facing a number of major issues:

1. We do not attract and keep enough of the best teachers where they are needed most.
2. Not enough teachers leave college prepared to ensure that our students reach higher standards.
3. Not enough teachers maintain the knowledge and skills needed to teach to high standards throughout their careers.
4. Many school environments are unsafe, in poor repair, or overcrowded or interfere with learning in other ways.

While there is general agreement that these are important issues, there is one notable gap in this litany—that is, that not *all* teachers exhibit the high moral character necessary in those entrusted with our children.

Teachers and other school professionals have, as we know, a greater influence on students than anyone else outside of their families. As leaders and role models, educators exert a moral influence that is no less significant for its being

a subconscious or unintentional influence. While we, as program managers, accept as our responsibility the building of an educational system in which competent professionals enable all students to master the knowledge, skills, and understandings they need to succeed, we have given scant attention to the moral character of these professionals.

We are now at a critical juncture. With the advent of a severe teacher shortage and the impending loss through retirement or other causes of close to 50 percent of the country's teachers, we will soon experience a major remaking of our teaching work force. Thus, there is added reason for diligence in preparing and licensing new teachers, as the demand for more teachers threatens to undermine efforts to be more selective about whom we admit to service in the teaching profession. This situation presents us with both a challenge and an opportunity.

See No Evil, Speak of No Evil

Over the past 50 years, state officials have been reluctant to spotlight the moral character of prospective and practicing teachers as an issue deserving of our attention. After all, it was, for most of us, almost inconceivable that a teacher would commit a crime against a child. So only when forced to did we reluctantly acknowledge this aspect of our authority as one to which we must pay heed. Like the proverbial ostrich, we preferred to keep our heads in the sand. This is not meant as a criticism, but rather as a statement of fact.

As one who prepared for teaching in the late 50s and early 60s, I remember well the words of my mother prior to my embarking upon my student teaching assignment—"Do not stay in a classroom with a single student—be it male or female—unless there is another adult present." Looking back on that advice, I realize that my mother was aware of things that I, a naïve college senior, had no inkling about: that bad things sometimes happen between a teacher and a student. Let's remember that her advice came at a time when people rarely spoke openly about child abuse or acts of immorality, particularly regarding teachers. Problems of this sort were most often addressed quietly, resolved discreetly, and not reported. Let's also remember that this was a time when children were to be seen and not heard. So when bad things did happen, it was not likely that children would tell, and if they did, it was not likely that they would be believed. For many adults, it was easier to accept the probability that a student misinterpreted the actions of a teacher or, worse, made false accusations, rather than to question a teacher's integrity.

Sadly, we have now all come to know that bad things do indeed happen. However, it was not until later in my career, when I assumed state-level responsibility for teacher education and certification—first in Rhode Island and then in New York—that the issue of teacher misconduct would raise its ugly head, stare me in the eye, and demand a response. My own personal involvement with the moral character issue paralleled the gradual evolution in state and national policy in this area.

Beginning to Address the Issue

In 1961 NASDTEC reaffirmed a policy adopted some ten years earlier that the appropriate official in each state agency responsible for education be notified immediately of the revocation of any teaching credential or of the reinstatement of a certificate earlier revoked. A uniform reporting procedure was called for, but it was not until 1962 that NASDTEC achieved consensus on a certificate nullification report form, the essence of which was used by a majority of states for many years. It is no wonder that there were few, if any, actions in this regard. While teachers are a subset of the general population, God makes teachers differently and, thus, He sets them apart from all other segments of society—or so many believed.

The Association then established a Revocation Committee, whose function was to highlight the critical importance of notifying colleagues of state action against applicants and/or certificate holders. By 1965, 36 states were reporting revocation activity to other jurisdictions.

During this period, state education commissioners were becoming increasingly disenchanted with, and wary of, the protocols used for suspending, annulling, or denying certification—actions in which they were the exclusive arbiter, i.e., both judge and jury. In New York, the earliest evidence found of a certificate revocation was in 1963 by Commissioner James E. Allen, who later went on to become U.S. commissioner of education. During Allen's tenure in Albany, some dozen or so teaching certificates were either annulled or denied. Early in the '70s his successor, faced with the same challenges of serving as both judge and jury, expressed great discomfort with his role in this process. He demanded that an advisory board on teacher education and certification study the issue and make recommendations on a better way to resolve moral character cases. Acting upon the advisory board's recommendations, the State Board of Regents established procedural rules governing the adjudication of cases in which it is believed that the holder of a certificate or applicant for a certificate has questionable moral character that might affect his or her teaching ability.

Upon adoption of these rules, my office became the locus of this new function. The screening of applications for evidence of questionable moral character and the review of information from federal and state agencies relative to acts committed that raised reasonable questions as to the holders' or applicants' moral character became the domain of the office manager.

The procedures and protocols established some 25 years ago in New York have continued to serve well the interests of the state in the education of its children and, I would venture to say, have served well the organized profession. Evolving from this single-person responsibility, today we have a highly successful office staffed with a supervisor, an attorney, professional conduct investigators, and administrative support staff. In addition, we have the involvement of some 15 professional evaluators who initially screen certification candidates' applications for evidence of questionable moral character. To support the work of these staff members, the department is in the process of employing sophisticated technology to bring greater efficiency and credibility to our work and to provide a data-driven basis for decision making.

NASDTEC's Efforts

Meanwhile, on the national scene during the '70s and '80s, NASDTEC continued to nurture the state's use of the certificate nullification report form. However, the chief state school officers were growing increasingly uneasy with the system for ridding the teaching ranks of individuals who failed to measure up to standards of character. The situation erupted in 1984, when the Council of Chief State School Officers wrote to former NASDTEC president Herman Behling that if the Association could not get its own house in order, the chiefs would take control of the matter. This led to the formation by President Austin Hanner of a professional practices committee under my leadership, to propose a system for ensuring accountability and satisfying the demands of the chiefs. In conjunction with the Contract Administrators Association of the Interstate Certification Project, our efforts came to fruition in 1986 with the establishment of the NASDTEC Educator Identification Clearinghouse.

The purpose of the Clearinghouse is to assist states in identifying, in a timely manner, applicants for credentials who have had their applications denied or their credentials adversely acted upon for cause in other jurisdictions. Today, all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, some U.S. territories and possessions, some Canadian provinces, and other countries participate in this effort. The Clearinghouse has grown rapidly,

from its inception in 1986—with the participation of but one state and the issuance of one notice of action by the state of Alaska—to 1998, which saw 47 states identifying some 1,677 actions.

This number is both distressing and heartening—distressing, in that the number of instances in which applicants and/or credential holders have been found to be of questionable moral character is of such magnitude; heartening, in that almost all states actively participate in the Clearinghouse and receive this important information. Unfortunately, some jurisdictions, for reasons unknown, are either failing to report or do not yet have in place a mechanism to do so. Some jurisdictions, I fear, remain in a state of denial. In others, responsible officials are simply reluctant to make this a high-profile issue, despite understanding fully the harm that may befall students through their inaction.

The NASDTEC Clearinghouse represents but one outcome of the Association's determination to face this issue head on. Other continuing activities are:

- the biannual professional practices institutes conducted in Colorado Springs, Colorado; Tampa, Florida; and Hartford, Connecticut, which attract individuals from a broad range of constituencies;
- the ongoing dialogue by members of this Association through its Professional Practices Committee and the Doug Bates Lecture series;
- networking, such as that occurring at this meeting and similar activities;
- the ongoing refinements in identification and reporting processes (an example of this is the requirement for fingerprinting either prior to credentialing, which is preferable, or at least prior to employment and the increased use of technology, such as that developed by Lockheed Martin for high-speed fingerprinting and reporting); and
- a proactive stance by our respective offices in defining character standards for teacher preparation and credentialing.

It is clear to me that the work we do collectively here and independently in our home states is vital to all schools and to all students. This Association has brought every one of its member jurisdictions to the table on the issue of professional practice. The ensuing dialogue has been a catalyst for real improvements in the way most of us screen and discipline teachers. I am extremely proud of this organization's accomplishments in this process. I am constantly reminded, however, of how much work remains to be done. It is time to ask ourselves where we should now focus our attention.

Solidifying the Foundation

Over the past year, we have been saddened by a number of events that serve to reinforce our collective sense of the degradation of our moral and ethical standards: the scandals in our nation's capital in both the executive and legislative branches and the school shootings in West Springfield, Oregon; Paducah, Kentucky; Littleton, Colorado; Pearl, Mississippi; Jonesboro, Arkansas; and Decatur, Georgia. It is regrettable that the society in which young people are growing up today bombards them with images of violence and displays of hypocrisy and provides them with so few positive role models.

All too often when an educator is charged with misconduct, colleagues and community members express shock and disbelief. "How could it be?" they wonder. "He/she was a qualified, caring, and competent teacher, always going the extra mile for the kids." We hear such comments as the guy/gal was "brilliant," "a great coach," "one hell of a teacher." Too bad about that little character flaw. Regrettably, I think we tend to compartmentalize behavior and to view good character as just one of the many traits that an individual may or may not possess. It is as if good character were not the necessary foundation to good teaching. If our leaders and role models do not exhibit good character and act with integrity, then the resulting hypocrisies will only serve to further alienate young people and foster the belief that appearance is valued over substance.

Whatever the source of this apparent erosion of values, I am not suggesting that the educational community is responsible for our society's ills. I do believe, however, that responsible adults and, most especially, those who guide children or define policy for such guidance no longer have the luxury of maintaining a low profile.

As Theodore Roosevelt once said, "To educate a man in mind and not in morals is to educate a menace to society." We must assume a leadership role in raising the standards for moral character to a level consistent with the high expectations we hold for those to whom we entrust the care of our children. We simply cannot separate good moral character and integrity from good teaching and enlightened leadership. The teacher and the school principal are central to this enterprise and must be educated, selected, and encouraged with this principle in mind. In truth, all of the adults in a school must embody and reflect the moral authority that has been invested in them by the parents and the community. Unimpeachable character is an integral part of all school professionals and must be perceived and required as such.

The Next Step

Let us now face up to what I believe is the next big task at hand. Let us embrace a more comprehensive view of teaching. If teaching is seen as a tripod, one leg represents rigorous preservice preparation and credentialing, one leg represents competent and ethical practice, and the third leg represents continuous renewal and development as a professional. To date, efforts at raising standards have focused extensively on preparation and credentialing. While character was implied, we did not wish to alienate our friends and foes alike by treading on sacred ground. I challenge you—indeed, the millions of children in our schools and their parents challenge you—to focus your attention on high character standards for teachers at all junctures in their career, from preparation to credentialing to continuing practice.

We are no longer talking *only* about the teacher who molests children or threatens their physical welfare. It is abundantly clear that such a person is unfit for teaching and, in the main, most of our departments have established a relatively efficient process for taking action after an incident has occurred. However, there are other kinds of unprofessional conduct that also threaten a student's physical, emotional, or spiritual welfare, and we are often less effective in responding to cases that do not involve criminal convictions or create sensational headlines.

Take, for example, a case that recently resulted in the invalidation of a veteran teacher's certification. What began as a single complaint regarding an incident of corporal punishment quickly mushroomed when others came forward to lodge allegations against the teacher. The investigation revealed a 20-year pattern of conduct that included many documented instances of emotional abuse and intimidation. It seems that each year this second-grade teacher would focus his cruel attentions on one or two vulnerable students. The allegations together established a recurring pattern of conduct wherein the teacher would repeatedly call the children names such as "idiot," "four-eyes," "fatso," "stupid," and, in the case of a child with severe buck teeth, "hammerhead." One parent recalled her daughter's continually losing her glasses only to find out later that the child was purposely losing them because she was ashamed to wear them. It is difficult to quantify the impact of an event like this on a child's educational experience and emotional life. We know that it can be very difficult to litigate this kind of case and/or effectively discipline the offender until or unless a mountain of evidence is uncovered, but clearly no child should ever be subjected to this treatment.

When bad things happen in a school, they rarely occur in a vacuum. Far too often our investigations into allegations of misconduct reveal disturbing evidence that other professionals had knowledge or at least suspicions of a colleague's questionable conduct. However, they chose to "mind their own business" because they didn't know for sure and didn't feel it was their business to get involved. Even more disturbing are those cases in which clear evidence or reasonable sureness is established but still does not lead to appropriate action.

Some of you might say that our traditional approach—the quiet, informal handling of a teacher's misconduct—is less likely to occur today. While I do believe we're doing better, make no mistake—quiet deals still go down. For example, last year a case in New York received tremendous publicity when a fifth-grade teacher was charged with sodomy. The 34-year-old teacher had been invited to a New Year's Eve party by the parents of one of his students. When he became inebriated, the family was kind enough to allow him to stay in their home and sleep on their sofa. Several hours later, the fifth-grade student woke his parents and reported that the teacher had abused him and was now in his younger brother's room. After the story broke, it was learned that this teacher had been suspended and then let go from his last teaching job, in a private school located in a border state, for having sexual conversations with his students. Yet when he applied for work in New York, he carried with him a written recommendation from his previous employer that shimmered with words such as "popular," "creative," and "innovative." District officials had called his previous employer prior to his hiring and had been given a positive recommendation. "How can this be?" you ask. When reporters questioned the private school's headmaster, who had written the recommendation, she defended her decision not to explicitly warn others. She stated that she did not mention his suspension or other concerns during the reference check because it was never proved that the teacher did anything illegal and she was afraid of being sued if he was rejected from a job. This is, to put it mildly, an alarming example of lack of administrative leadership.

We must insist that teachers and school leaders adhere to high standards of conduct and exhibit courage and leadership. Educators must see the welfare of *all* children, not just those in their own backyards, as their concern.

The Ultimate Goal

I can tell you that our experience in New York shows an increase in both the number and the complexity of cases we are handling. It is disturbing, although perhaps not surprising, that the more we do to strengthen our

discipline unit and publicize its authority and function throughout the state, the more our caseload increases. Yes, the majority of our cases still involve sexual misconduct, but there is a broader range of cases that require our attention. These are cases involving test fraud, emotional abuse, use of school computers for pornography, misappropriation of school district funds, the use or sale of controlled substances, providing alcohol to students, sexual harassment, grade tampering, and assault. And make no mistake—similar cases are to be found in every state as well.

While we have become more proficient at ridding the classroom of known child abusers, we cannot afford to rest on our accomplishments. It is better that we strive to do more than “mop up.” It is better that we set as our ultimate goal the prevention of teacher misconduct. This can only occur by:

- raising standards for moral accountability—for admission to, retention in, and graduation from educator preparatory programs;
- revising the content of teacher education programs to foster an awareness of personal and professional integrity and accountability;
- exercising diligence in administering rigorous criteria for licensure for prospective teachers;
- adopting sophisticated data-gathering procedures; and
- revising the system of inservice teacher evaluation to focus on competence in subject matter content, pedagogical application, *and* moral character.

I believe that raising standards for moral accountability will lessen the likelihood that harm will come to children in schools. This is a compelling reason for us to strive to infuse the “character issue” into all aspects of teacher preparation, certification, and continuing employment.

What I have outlined today represents an ambitious agenda. This is not work for the faint-hearted. We, of course, cannot go down this road alone. We need the support of our agencies and the many external constituencies: the organized profession, the legislature, the business community, school boards, teacher educators, statewide parent groups, educational leaders at the district level, and our chiefs or commission executives. Nevertheless, it is our individual responsibility to assume the primary role of advocate and lobbyist for this agenda. We know what the issues are, and we know that they are real. We know that teaching to higher standards means nothing more than good teaching and that good teaching rests on good character. We know that there are some educators who are not fit for service in our schools and that we

must remove them from the profession. We know that moral character and teacher discipline must be a staple in our dialogue with audiences inside and outside our agencies.

Conclusion

I believe my career in education at the local, state, and national levels speaks of the esteem I have for teachers and the passion I have for the profession of teaching. I believe this Association embodies the highest professional ideals, and I am proud to be associated with it.

I hope my comments have enlarged your frame of reference and that you are encouraged in your efforts to promote high standards and to ensure the most rigorous accountability.

In concluding my remarks this morning, I want to acknowledge the inspiration I have drawn from each of you in pursuing this agenda, and, further, the assistance of two esteemed colleagues in preparing this paper: Bart Zabin, supervisor of the Discipline Unit, and Nancy Taylor Baumes, secretary to New York's State Professional Standards and Practices Board.

Godspeed to you in your continuing good work on behalf of all children, and may God's countenance continue to smile on Doug Bates.



Fourth Annual Doug Bates Lecture, 2000

NASDTEC Conference 2000

Adelle Nore

I am very honored to have the opportunity to meet you in person to give the Doug Bates Lecture. I am going to tell you a story—a true story, not fiction—about 37 children I first met about ten years ago. Like all good stories it is going to be a drama—it has pathos and real courage. There still might be a happy ending, but I will not know that until the next NASDTEC conference.

As you know, I am Chief Investigator for the Office of Professional Practices in the state of Washington. I have about 30 cases that I am working on actively and 60 cases in all. I organize each case, I set up the appointments, and I travel to the case so that I can interview, obtain statements, and gather the evidence. I am a working investigator—that is what I do every day. My agency asked me to work in my home several years back, and so I sat down in my bedroom, which also is my office, and drafted these comments. I was wearing jeans and a sweatshirt, and I had my Labrador retriever Tucker with me. Tucker always keeps me on track. He is three years old and weighs 85 pounds and reminds me not to sit and work for more than an hour at a time. A little exercise and a snack are really important. I had Doug Bates on my mind and in my heart, and so I needed to take a break now and then and I appreciated Tucker's kindness.

What I want to talk to you about today is the same thing that Doug and Paul and Charlie talked about in earlier lectures. I want to talk about children, about physical abuse, emotional abuse, and sexual abuse—the things that you all deal with many times in your day, in your life. Ten years ago I investigated a case in eastern Washington, a very tangled case. As I began to amass the evidence, I discovered that more and more witnesses were coming forward,



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and sadly enough, more and more victims. I kept going back to that town in eastern Washington and I spent a long time talking to children and parents and staff members. It is a small town, and everyone, including the teacher who was under investigation, knew who I was by the time the investigation was complete.

In Washington, the Superintendent of Public Instruction has five options in dealing with discipline right now. The investigation may prove that the individual did not do anything inappropriate. Or the investigation may lack sufficient evidence for professional action to take place. There are a lot of reasons for closing a case. One of them includes the inability of a witness to come forward and go through what that person has gone through before. The educator can also be reprimanded—a letter saying, “Don’t do it again.” An individual can be given a stayed suspension (allowed to continue to teach with stipulation), or an outright suspension. Time frames differ; the suspension can require a year, two years, or more. Individual certificates can also be revoked. If any negative action is taken, the individual can appeal the results on three different levels.

When this investigation was completed about nine and a half years ago, the teacher received an order of proposed revocation. In the findings of fact and conclusions of law, the letters said that the teacher involved had sexually, emotionally, and physically abused children. At the time my office was taking action, the school district that had sent the teacher a letter of probable cause for discharge was going to take action as well. The regulations in my office allow a teacher to ask us to stay our action until the district is through with what they are doing. In order to do that, the teacher has to sign an agreement with our agency confirming that he or she will not teach during that time. So the teacher signed that agreement, and our case stopped dead at that point. The school district completed their hearing process, and the hearing officer determined that the discharge was appropriate; the teacher should be dismissed. The school district had won. However, that was on the first level.

The teacher went to the next level of appeal and worked through the court system while we waited. Years passed. Then, about five months ago, the Assistant Attorney General called me on the case. The teacher had gone through the Washington State Supreme Court and then up to the U.S. Supreme Court, which did not hear the case. In the year 2000 the school district had finally won conclusively. The teacher had been discharged. After all those years, our revocation case could move forward, nine and a half years after the Office of Professional Practices (OPP) had sent out the letter of proposed revocation.

As I said, presently an individual who has disciplinary action pending before the OPP can appeal at three different levels. The Washington legislature recently passed the Standards and Practices Board, which will be housed in the offices of the Superintendent of Public Instruction. I do not know what the exact process will be until the new board has set up its regulations and is ready to act. In the meantime, our present process is the one we are still using. The second level of appeal involves a hearing in front of an administrative law judge, and at that point, which is where we stand right now, the children who signed affidavits for me ten years ago will need to testify for our agency again. The Assistant Attorney General let me know what the district had done, and then said, “Adelle, go find those people, all those children who were willing to testify ten years ago. As you know, if you cannot find them, or if they will not testify, we are going to lose this case.”

In Washington our burden of proof is “clear and convincing.” For the district in Washington, the burden of proof is the preponderance of evidence, so when the district won we proceeded with our own case. I pulled out the old case and re-read it a few times, and then I began to try and find these individuals. The children were now adults. I started by calling the family members I knew—generally a mom or a dad—and I started the conversation by saying, “You may not remember me because it has been a very long time, but I met with you in your living room about ten years ago. I also met with your son or daughter.” I reminded them that was the process I used when I completed my investigation regarding this teacher. Once the family member was willing to share telephone numbers and addresses for the now adult child, I would ask the family member to call and say I was going to be calling.

I waited a couple of days and then called the prior student. We talked about what had happened over the years, and I explained what our present process was going to be. I then sent a backup letter to each prior student, enclosing a copy of his or her statement signed so many years ago. The conversations were unique from my point of view, giving me a chance to re-acquaint myself with everyone involved in the original case and to learn what had happened to them in the past ten years: which ones had children of their own now, whether they’d gone to college, their present employment, and, very importantly, whether they could deal with opening old wounds. As I talk about some of these children, I am going to use fictitious names.

Christy graduated from high school in the early 1990s. When I asked her if she remembered the case, she said, “I’ll never forget that awful memory.” When Christy was in elementary school, it was her worst nightmare to be called to the blackboard, because the teacher loved to belittle students. He

would make Christy stand in front of a math problem and when she could not figure it out (and he would never help her), he would tell the rest of the class she really must be stupid. Then he would make her stand there until she began to cry. He would then let her go back to her desk, telling the rest of the class that she was acting like a baby. Christy said the teacher seemed to like some of the children, but picked on the youngsters with low self-esteem, the ones who were insecure. Those youngsters were often from broken homes, and their parents did not have much money. Christy fit all of those categories. When Christy asked permission to go to the bathroom, the teacher would refuse, telling her that she did not ask permission correctly. If she asked him what she should say, he refused to tell her, saying that she had to figure it out herself. Christy tried to avoid having to ask permission to go to the bathroom, but there were times when she had to. In the morning, leaving home and heading for school, she became more and more terrified, crying, her stomach aching, and doubled up at times. When Christy's mother finally took her to the doctor, she had an ulcer. After Christy and I had gone through her affidavit again, she said that this teacher had a huge impact on her life. She became an introvert, hunched into her desk, never asking questions, and trying to stay out of the line of sight of this particular teacher.

It was not until Christy's senior year in college that she started to stand up and talk in front of students. In elementary school, she always felt that the students knew that she was stupid, and she would do anything to avoid standing up or talking in class. A community college instructor noted that she was not participating in class and talked to Christy, asking her why she had the problem. When she explained what had happened to her in elementary school, the instructor began to encourage her, praise her good ideas in class, and work with her. Christy began to ask questions in class. She said that for the first time since fifth grade she began to think she really is an intelligent person.

Mary was in sixth grade when she came to this teacher's class. She was a newcomer who had moved from another part of the state. Once she got into the class, she developed a crush on one of the boys. She chased him and kissed him on the cheek. When the teacher learned that she had done that, he turned her desk to the wall in the back of the room and left her there. The teacher had Mary eat lunch at her desk and took away all of her lunch time and recess time. When she failed to do something correctly, he had her write sentences, hundreds of them. With her back against the class, she began to feel very isolated. The other students began to needle her and became more negative about Mary. Eventually the teacher put a screen around Mary and

left her there for the rest of the school year. At the end of the school year when the kids received honors and awards, the teacher wrapped up Mary's sentences (which he had saved) with pretty paper, and announced that Mary had an award as well. When she opened the award and realized it was the sentences, she was extremely hurt and embarrassed. Mary says she learned not to like school that year and that she has felt the same way ever since, even now as an adult. She still wonders why the teacher punished her so severely and so unreasonably. At that point she had just been a little girl who really liked school. Both Christy and Mary endured emotional abuse, one of the hardest things for my office to work with. I believe it is the hardest thing for teachers and other staff to work with as well.

Sam was in seventh grade when he was in this same teacher's classroom. He was outside at recess playing ball, and he caught a ball the wrong way, jamming his fingers back—very painful. He went back into the room to work at the computer, but he could not type very effectively because his fingers were very sore and beginning to swell. The teacher came up behind Sam and grabbed him by the neck and squeezed hard, telling Sam that he ought to get busy. Sam replied that he had hurt his fingers and couldn't, and that the teacher was hurting him. When the teacher let go finally, Sam was trying not to cry. He did not want the other students to see he was scared. His parents saw the injuries and the bruising around his neck. They went to the school and filed a complaint. The school district kept those investigating notes, some of the first things they ever kept over the years regarding this teacher.

Craig was also in middle school when he was in this teacher's classroom. At the start of the school year the teacher told Craig that he was going to make an example out of him in front of the other students. Craig did not understand why—he could not figure out what he had done, but evidently something had gone wrong. The teacher yelled in Craig's face, standing very close to him, jabbing Craig's chest with his fingers. The teacher spat and slobbered on Craig as he was screaming and yelling. At one point he accused Craig of hitting another child in the classroom—a girl. The girl said, "No, Craig didn't hit me." The teacher said that he was going to go ahead and punish Craig anyway and so he took Craig out of the classroom and paddled him.

When Craig was in ninth grade playing flag football, the teacher was his coach. He began to scream and holler at Craig and another lineman. He had both boys bend over in the locker room. The teacher then kicked Craig and the lineman as hard as he could on their tailbones, and told them they had not done very well in practice. It was very painful and humiliating to be

kicked that way, and Craig did not tell his parents what happened until years later. Craig remembers the teacher grabbing another student and wrapping his hands around the youngster's throat. Eleven of the 37 students I had interviewed during this case reported physical abuse. The physical abuse was meted out to the boys, not the girls.

Students were also sexually abused by this teacher. Joanne was taught by him in fifth grade. She was in a school play and she was going to be a green pea plant. Her mother had made pea pods that had to be pinned on with a safety pin. The teacher took Joanne into the coat closet and began to pin the pea pods on, even though she asked him not to. When he pinned the pea pods on, he always pinned them on her breasts. This teacher also rubbed Joanne's shoulders in the classroom and continued to do so even after she said, "Don't do that." She had long hair, and he liked to put his hands in her hair even though she said, "Don't do that." And he also sat her in his lap, though she again said, "Don't do that." The teacher never responded to requests not to be touched in those ways.

Lisa was also in fifth grade that year. The teacher came over to Lisa's house because he knew Lisa's mom and knew there was a hot tub there. Lisa, her mother, and the teacher all went in the hot tub together. When Lisa's mother got out of the hot tub and went back into the house, the teacher put his arm around Lisa and put his hand down inside her bathing suit, down to her buttocks. She became very upset and pulled away from him immediately, and climbed out of the hot tub. The teacher just laughed at her distress, and so she never told her mother.

When I started this case, years before, I was working with students who were at the elementary and junior high school levels. As I talked to youngsters, they began to tell me about what had happened not only to them personally, but to their brothers and sisters as well. Some issues came out at the high school level. When you investigate a case and you are about halfway through gathering evidence, you begin to know whether or not the educator has done something inappropriate, and sometimes whether or not the teacher may have done something terrible. As the evidence mounts there is generally a "smoking gun," which is the statement from a student that lets you know that the case must proceed to discipline. I was amassing more and more critical information at the elementary and middle school level, but when I moved to the high school level, I found the smoking gun.

In high school Sheila had this same teacher for driver education. He made sure that Sheila was always the last student who was dropped off after the

students had completed their driving practice. That way Sheila would wind up alone with the teacher. He would put his arm around her and rub her shoulders and neck, even though she asked him not to do it. He would then kiss her on the cheek, and on her birthday kissed her on the lips. It was a passionate kiss and she was very frightened. When she went home that night she told her parents, and her dad went and talked to the teacher and said, "Don't ever do it again." With Sheila's statement completed during the investigation, it was clear that the agency had enough evidence to act.

It was Susan, however, who gave us the smoking gun almost at the end of the investigation. She knew the teacher when she was in high school, but she was not in his classroom. She was a sophomore; she was very quiet and shy. The teacher would walk by in the hall and touch her on the face or touch her on the head, and then come up behind her and try to massage her shoulders. The teacher became very interested in Susan, and he stopped by her house and talked to her parents. He told them she was too shy, and should be out doing more things, like basketball. He insisted that she go down to the gym with him after dinner and shoot some baskets. He then positioned himself behind Susan, touching and rubbing her on the breasts. She was very frightened, and she shook him off and walked home. She talked to her parents about what had happened, and they told her to stay away from him.

That same summer Susan stayed overnight at a friend's house. She woke up in the middle of the night. It was three o'clock in the morning and the teacher was in the room. He had come through the open window, and he was naked. He pinned Susan down with his hands and body and tried to keep her quiet. He had an erection, and he told Susan he would kill her if she made a noise. She continued to struggle, and as they fell on the bed she was able to scramble away and run out of the house in her nightgown. He followed her out of the house, calling out as she left that he would kill her parents and then come after her sister. When she got home she was hysterical, and her mother asked what had happened. She said there was someone who had bothered her, but did not tell them it was the teacher. When Susan saw the teacher the next day, which she could not avoid as she walked through the hall, he walked up to her and said very quietly, "Are your parents still healthy? It would be a shame if anything happened to them. You want to have some company?" And he continued to do that for the rest of the school year.

This teacher had a tremendous impact on Susan. She was very shy to begin with, and she began to be withdrawn. She stayed home and did not go out on dates; she would not go to any school activities unless her parents were there to take her. She agonized over what she had done to cause the sexual assault.

She blamed herself. Susan said she had very little self-esteem and could not trust men after that point. She married after high school, and then divorced. She kept her secret until I talked to her that day during the investigation.

I have talked with 36 of the former students—I could not find the 37th. Two of the students feel they cannot testify, that they cannot go through it again; one of the women is still very fragile. She has remarried, and her husband does not know what happened to her. She now has two daughters, and they do not know what happened to her either. The other student who feels she cannot testify was molested by the teacher when she was six years old. He was a family friend, and when he babysat, he took her into the bathtub and sexually molested her.

The majority of the men and women I talked to are presently married, and many of them have children of their own. They reiterated that they do not want any child going through what they went through, and they all said they were very protective of their own children. None of them would hesitate to go to the school and talk to an administrator about any problem. A fair number of the students went to college, some at the community college level and some to a bachelor's degree level. None of them became teachers. The prior students include a nurse, a corporate executive, a firefighter, a farmer, and a case worker—all the different kinds of jobs you would expect if you talked to 37 people. The girl who was a pea plant is now engaged to the man who was physically abused by the teacher squeezing him on the neck. They are going to be married this summer. Their only concern was to avoid having the hearing during the month they are going to get married. All of these men and women were willing to testify now, all these years later.

When I got back in touch with one woman to let her know we were going on to a hearing, she told me something she had not told me before when I first took her statement, something she had never told anybody. Her parents were drug addicts when she was in high school, so she had no one to protect her when the teacher went after her. All of the ex-students talked about physical, emotional, and sexual abuse that they had endured, and also their fear. They all said, except for the two who cannot testify, that they would testify again, that they would remember what happened forever. They said they'd come to the hearing, wherever it was held, wherever the agency needed them. All of them said that, of course, this teacher should never again hold a credential. Each of the individuals asked me whether or not the teacher could simply go to another state and do it all again. So I told them about NASDTEC and the system that you have set up, and it was Susan who told me she felt the system was pretty amazing.

These 37 people are strangers to you, of course. You have never seen them. I wanted to tell you a little bit about them so that they will not be strangers to you when you go back to work. These people have waited for our system of professional practice to work for ten years. They have never forgotten what happened to them, and they are still willing to go on to the next level of hearings where the majority will testify again. If we win and the teacher does not appeal beyond this level to the third level, then my case will be concluded as well. I will send a letter to all the prior students and say, “OK, we’re done. We won,” and remind them that the NASDTEC system is going to put the information in the records. The information will appear clear across the U.S. and the Canadian provinces.

I talked to Doug Bates on May 11—I wanted to go over the ideas that I was going to share in the annual lecture, and I told him about this case. One of the things we talked about is the cost for all of us. More and more of our cases are taking more and more time, and after people are asked to testify, they have to wait for years. Doug reminded me that every state needs to think about its own regulations and how to deal not only with statute of limitations, but also how we deal with the victims, whom we resign to limbo.

I told Doug that I want him to know, as clearly as I could, that I love him and that I will always think of him when I am doing an investigation. He told me he admired and respected the dogged resolve that was necessary to investigate cases thoroughly and to take disciplinary action. Then he said, “Remind everybody again to continue to care enough. Through the days and the weeks, and sometimes through the years. Eventually we all need a reminder, to continue to care enough.” I have always had a profound respect for Doug Bates. We have talked about people and the systems that can hurt them, long before I knew he was in a struggle with cancer. He has always been one of the good guys. And when I am tired and trying to finish something that seems insurmountable, I think about Doug and I think about all of you, because the good guys are still there, badly needed. To all of you who work in professional practices and on behalf of 37 students who grew up and thrived and are still there despite what they have been through, and from all of the children you work with, thank you.



Fifth Annual Doug Bates Lecture, 2001

Wide Feet and Tennis Shoes

Martin W. Bates

At the turn of the last century, my father's grandfather, Ormus Ariah Bates, was a teacher in the small community of Tooele, Utah. In the spring, when the students turned from school to their family farms and ranches, Ormus would take his two oldest sons to the homestead in Idaho, leaving his wife and younger children at home until fall. Apparently, the salary my great-grandfather received for his teaching was not enough to support his family. I am pleased to say that this educational challenge has been solved in the past century.

The next-to-youngest child, my father's father, Luke, was so—should we say—active, that his mother insisted that he go with his father to Idaho rather than stay with her and the other children. And so, beginning in 1908, Ormus took his two oldest sons, in their late teens, and his second-to-youngest child, not yet five, to Idaho for the summer.

Several generations later, Luke's son, my father, had frequent opportunity to travel throughout Utah to speak to educators. My mother insisted that I travel with him on these trips—to keep him awake on the late drives home. I did my job well, keeping him awake by bounding from the front seat to the back, then from the back to the front. And so on.

On these trips, I began to recognize certain themes in the talks he gave. There were also one-liners he used frequently, such as “Don't attribute to malice what can be explained by ignorance,” “Any idiot can file a lawsuit,” or “If you are sued for acting to protect a child you'll win, but if you are sued for not acting you'll lose.” I would sometimes tease him, asking if he would be giving talk #52 or #64.

 Martin W. Bates is Assistant to the Superintendent, Policy, Compliance and Legal Services, Granite School District, Salt Lake City, Utah. Martin is Doug Bates's son, and was invited to give this lecture the year after his father died.

One segment that often arose in my father's talks used me as a seemingly impromptu prop. I have wide feet that quickly split the sides out of shoes. As part of his presentation, my father would point this out. Then he would say, "There is nothing wrong with his feet, and, independent of his feet, there is nothing wrong with the quality of the shoes—they just don't fit each other." "With no reflection on you," he would conclude, "nor on the education profession, you may just not fit. If that is the case, get out before the sides split." People can be good people, and the education profession is undoubtedly a great profession, but that does not mean that the profession and all good people are compatible.

We in this room find ourselves in a bit of a dilemma. It is likely that a significant portion of our time is spent assisting people out of the profession and making sure they never get back in. Or, in this same vein, we discourage people from getting into the profession in the first place, by fingerprinting them, conducting background checks, and calling former employers and associates to pry out some disqualifying tidbit.

Then we change our hats and go to meetings, bemoaning a teacher shortage, and develop plans to make it easier to get into the profession through alternative licensing programs, signing bonuses, moving expenses, and so on.

These competing interests and the tension between them—exclusion from and recruitment to our profession—need ongoing study and action. I would like to suggest some agenda items for study and action.

Through great effort with our legislatures, many of us routinely deal with criminal background checks. While enormously helpful, they are not fail-safe. Let me share a few examples and have you consider whether such problems could occur in your areas.

The first problem may be getting people fingerprinted at all. In theory, in my school district, no one works until paperwork, including fingerprinting, is complete. This is enforced by not issuing paychecks to people with incomplete files. Note that this completely sidesteps the issue of volunteers, who, in my state, must also submit to a background check if they are to have "significant unsupervised contact" with children. What, however, is significant unsupervised contact?

In any event, in practice, there may be an extended period of time between the first day worked and the first payday, particularly for coaches who may submit time and attendance for pay once at the end of a season. I have had

a person call and ask why they had not received their \$1200 pay yet. I told them it was because they had not yet been fingerprinted. After a pause, the person told me, “Never mind”—they would not be working for us again anyway. Now, why would someone walk away from \$1200 to avoid being fingerprinted? And how can we keep this from happening again?

A second background check problem is the time it takes, at least for us, for a return. Most take six weeks, some several months. We will hire people the week school starts, the last week in August, and there is no way we can say, “You’re hired. Why don’t you call in October to see if your fingerprints are back? We’ll have a substitute run your class until then.” I met recently with a gentleman with a distribution of alcohol to minors conviction on his record, a record I received three months into what had been very successful employment.

A final problem, which I know has been discussed by this group, deals with offenses that are not criminal and do not show up on “rap sheets.” In fact, as you well know, NASDTEC’s efforts have helped immensely in this area. An observation, however: I have found that persons terminated are increasingly hurrying to obtain subsequent employment, before professional practice wheels can turn to their conclusion. A somewhat uncomfortable story, uncomfortable for my friend and colleague Carol Lear of Utah’s State Office of Education, who is here with us, illustrates an important problem and suggests a solution.

My district terminated a teacher for looking at pornography on his computer when he should have been teaching history. After the termination and subsequent appeals settled down, I sent the referral to the Professional Practices Commission. Carol called me a few days later, ostensibly to double-check the social security number, but really to determine whether the person I had referred to the Commission was the same person who had just been hired by the State Office of Education—gratefully not by Carol. I verified his identity and suggested that he would probably be okay if he was the history curriculum specialist. No such luck; he was the new Webmaster.

The solution for this last problem goes back to the beginning of all employment practices. It is to call the previous employer and do old-fashioned reference checks. This having been said, I realize this oversimplifies the situation. My district will hire nearly 300 teachers in the next three months. It is a great expectation that reference checks will be done for each new hire, let alone each applicant.

I would like to change hats now to recruitment. At dinner last evening, those at my table talked about teacher shortages we are experiencing in our respective states. The University of Utah sponsors a job fair each March and, over the protests of Utah school districts, allows school districts from California and elsewhere to set up booths. This year our booth was right next to a booth from California. Now, I try to bring people to my district for the great starting salary of \$25,000.

Our unwelcome colleagues, at their booth, had a banner proclaiming a starting salary of \$38,000. Then they had additional banners: “Sign today—\$2000 bonus.” And someone was there with a checkbook! ESL endorsement? \$2000. Special Ed.? \$2000. I will not mention other incentives I saw at the fair or you will take the ideas home and make it more difficult for us than it already is. I understand that Texas steals teachers from New Mexico and Oklahoma. On the other hand, we have recently had a number of teachers come to us from Texas, fleeing high-stakes testing. Many of us, in Utah and elsewhere, are struggling to encourage and recruit educators for a profession in the face of increasing competition. It is an entirely different but perhaps equally significant discussion how leaders and residents in our fair state discourage education as a career at all, or drive people out after they have chosen it as their profession.

I believe that education is a great profession. Let me suggest that we are in a time of transition. I have participated in numerous conversations at this very conference; in fact I just attended a wonderful presentation regarding alternative certification.

I do not suggest that the “traditional route” is the only true route. But I do believe we must proceed cautiously. We do not have time at this luncheon even to ask, let alone answer, all the current questions about teachers and teacher certification. However, it is this very group that must answer those questions, if the answers are to be the right answers.

What makes a teacher? Is it seat time or demonstrated competency? Some would say that if demonstrated competency makes a teacher, then education is not a profession but a trade or craft. Maybe that is not bad; maybe considering ourselves craftswomen and -men would be positive. How does one teach, learn, or demonstrate the dispositions we often talk about for certification purposes? Why should colleges and universities maintain monopolies, as they do in my state, on certification recommendations? I like to tell my colleagues at various institutions, who say districts would struggle to maintain the same

quality standards imposed by these institutions, that their standards are not high enough, as evidenced by the 10% of new hires we non-renew after their first year.

These questions are perhaps quickly answered and those answers implemented. Another of my father's couplets was, "For every difficult and complex problem, there is a simple, easy-to-understand wrong answer." We must take great care as we answer the difficult and complex question of what a teacher is, and how do we know?

Our work is to get people out of shoes that do not fit, and other people into those same shoes. I trust that we can work together to do this and that we will do it well.

On a personal note, as I speak at this lecture that bears my father's name, it is difficult to overstate how important the personal associations that grew from this organization were to him. At my father's funeral, I was struck by the number of thoroughly good people who were a part of his life. I thought to myself, "How lucky he was." As I have continued to reflect on this, I am persuaded that more than luck was involved and I am forced to conclude that my father shaped the people who surrounded him into good people. I believe that it is our charge, in both professional and personal contexts, to enjoy the same good luck by shaping those people who surround us into good people.

Thank you.



Sixth Annual Doug Bates Lecture, 2002

NASDTEC Conference 2002

Gary Jones

It is an honor and privilege to share with you my thoughts concerning professional practices, and to look at NASDTEC's accomplishments, responsibilities, and opportunities in the field of professional practices and educator discipline.

NASDTEC is the fabric that holds the 60-member organization together in this effort we call professional practices. What have we as an organization accomplished in recent years? Certainly at the top of the list would be the Clearinghouse, which had its beginnings in 1986 with one participating jurisdiction and one reported action. As of 2001 the Clearinghouse had 60 members and 2,073 reported actions. Clearly, these efforts have protected kids and have been recognized by the American Society for Association Executives, which presented NASDTEC with the 2001 Summit Award for the Clearinghouse accomplishments.

I would be remiss if I did not remind you what the Clearinghouse was designed to do and conversely what it cannot do. The Clearinghouse is a data collection system for educator information. It is a tool for you to use as a part of your teacher background screening program. If you identify someone as having had an action taken against him or her in another jurisdiction, that should be an alert for you to continue your investigation and contact the submitting jurisdiction for more information. During the past several months I have had the opportunity, as Chairman of the Professional Practices Committee, to be interviewed by the media concerning educator misconduct. This was not only a good experience for me personally, but also has allowed me to advocate for NASDTEC's role in the area of professional practices.

 Gary Jones is former Director of the Professional Conduct and Investigations Committee at the Missouri Department of Elementary and Secondary Education. He is currently Assistant Superintendent, Blue Springs School District in Blue Springs, Missouri.

These media interviews were all somewhat similar in nature in that I would be asked about the topics you would expect: background checks, fingerprinting, “passing the trash,” the Clearinghouse, and other related issues. However, the last several interviewers took a somewhat different approach in that they were questioning the value of the Clearinghouse. One of the reporters asked me, “How can we be sure that some of these educators who have committed acts of misconduct don’t fall through the cracks and go unreported, which would allow them to reoffend?” My answer was we do not know for sure but that it is the best mechanism we have. As I told him, we must do everything we can to make the Clearinghouse work. That is my challenge to you. We must encourage local school districts to report cases of misconduct. Then, we must do our part to discipline the license holder and report the action to the Clearinghouse.

In jurisdictions where there is mandatory reporting, this job may be a little easier. But not all of us have mandatory reporting. Even if you do, can we say for certain that all cases are reported to you for action? I would say to you that even with mandatory reporting, some cases are handled locally and some may slip by. We must all do everything we can to protect kids. The Clearinghouse will only be as beneficial as the data submitted by each member jurisdiction. I cannot stress to you in strong enough terms the critical responsibility you have to report action taken in your jurisdiction to the Clearinghouse in a timely manner. You must report; otherwise our safety net to protect children is compromised.

As a teacher, law enforcement officer, and father, I have looked at the problem of educator misconduct from different perspectives. Do you know what our most effective weapon is to combat educator misconduct? That weapon is information—something we all have access to. The problem is we do not use this information effectively. Why? Because in many jurisdictions there are statutes, regulations, policies, or practices that cause us not to share information with each other. In my view this is wrong. This prevents us from doing our job of protecting kids. If you have a statute, regulation, policy, or practice that prevents you from sharing information with other agencies within your state or outside your jurisdiction, you need to do whatever you can to change this type of restriction. Do not hide behind or use these things as an excuse not to share information. Try to get these roadblocks removed. I have always operated on the principle that I would rather be sued by an offender for doing what is right as opposed to being sued by the parents of a victim for not doing anything. The court of public opinion will judge you very

harshly for not doing all you can to prevent educator abuse and misconduct. Likewise, I cannot stress too much that the Clearinghouse should not be used as a replacement for fingerprinting or used in any other way than for what it is designed to do. It is not a professional practices program in and of itself. The Clearinghouse is but one element of a total program.

Another accomplishment that we should all be proud of was recommended in 1997 during the first Doug Bates Lecture. In his closing remarks, Doug recommended that NASDTEC “compile a set of best practices” for the field of professional practices and “disseminate such information quickly.” The Professional Practices Committee completed this task in late 1999. The NASDTEC Executive Board approved and released for distribution the Critical Issue Paper on Educator Fitness in February 2000, with the following recommendations:

- 1) Each member jurisdiction should have a Professional Practices Unit.
- 2) Mandatory Reporting
 - a) Each member jurisdiction should receive reports from prosecutors, courts, school district, and other agencies.
 - b) There should be sanctions for failure to report.
 - c) In 1991 six jurisdictions had mandatory reporting; by 2001 that number has grown to 48.
- 3) Fingerprinting
 - a) Each member jurisdiction should require state and national fingerprinting prior to certification for licensed educators and prior to employment for non-certified personnel.
 - b) I would recommend fingerprinting anyone who has contact with kids.
 - c) Subsequent arrest notification should be part of the record system.
 - d) In 1991 twelve jurisdictions fingerprinted; by 2001 that number has grown to 48.
- 4) Expunged Records

Each member jurisdiction should seek legislation that permits the release of expunged records, plea bargains, suspended impositions of sentence, and diversions, especially when the crime involves harm or a threat to children.

- 5) The Role of NASDTEC
 - a) Operate the Clearinghouse.
 - b) Provide training through the Professional Practices Institute.
 - c) Review professional practice procedures and upon request provide assistance.

Those of us involved with educator misconduct cases see an all-too-familiar, common pattern: adults taking advantage of their positions of trust, and various institutions or safeguards failing to respond to the problem in appropriate ways. Educator misconduct and particularly sexual abuse can have a devastating effect on children. It subjects them to both immediate physical and psychological harm and can also cause problems that will remain with them for years, possibly for life. In many cases, schools do not properly check the backgrounds of all adults who come in contact with kids and then also fail to observe those adults effectively. Contributing to the problem are cases of initial reports of misconduct being overlooked as the result of the “code of honor” among teachers and a combination of ineptitude and unfounded worries about bad publicity. Investigations are not completed, or are pursued only when the evidence of misconduct is overwhelming.

Even then, schools often fail to take action against those with allegations of misconduct. All too often, individuals are merely transferred elsewhere or allowed to silently resign, enabling them to move on and reoffend—what we call “passing the trash.”

This type of inaction by the system may actually attract or encourage misconduct because potential offenders see the opportunity to continue taking advantage of children and avoiding punishment. Clearly, the vast majority of educators take seriously the responsibility placed on their shoulders. We are talking about a very small percentage of educators or volunteers who engage in this type of behavior. As we all know, there are cases of educator misconduct and sexual abuse unfolding publicly at any given time all across the country. What is totally unacceptable and inexcusable is that far more misconduct takes place—and far more kids are taken advantage of—than is ever made public. Inappropriate conduct and sexual abuse of children are underreported—make no mistake—especially when the offender is female.

The pattern of behavior that this small group of school employees and volunteers engage in is so outside the norm—and so repulsive—that many people assume they could spot it a mile away. But the reality is that it often

continues unnoticed for long periods of time, sometimes perpetrated by those least likely to come under question in the first place. Offenders often come from the top ranks of the profession and have outstanding reputations for dedication to their students, achieved over a period of time. Or they have successful athletic, music, drama, or other extracurricular programs, but for some reason the line between right and wrong has become indistinguishable for these offenders. At the same time, the students targeted or groomed by the offenders are generally the least inclined to report inappropriate behavior and the least likely to be believed if they do.

In many other cases, accused offenders have long been the object of speculation, rumors, and even formal complaints of inappropriate behavior. They often move from school to school, district to district, or state to state, one step ahead of their pasts or ahead of our efforts to impose discipline upon them, moving to states or jurisdictions that do not fingerprint, thereby avoiding detection.

Educator misconduct can happen anywhere, in all kinds of schools: public and private, religious and secular, rural and urban, rich and poor, and in every state and jurisdiction. This inappropriate behavior can occur in the school building itself, on field trips, or away from school in cars, motel rooms, or school buses, or at the victim's or offender's home. In many cases the offenders are men. But as I stated earlier, women will also offend, and many cases involving female offenders go unreported. The shocking fact is that poor judgment on the part of school officials can obstruct discipline, create years of lawsuits, cause community uproar, and even keep the victims from receiving the help and support they need.

NASDTEC will continue in its efforts to increase national awareness and attention to this problem and will aggressively lead the effort to prevent and curtail educator misconduct. I applaud these efforts and ask each of you to work together and with NASDTEC to achieve these goals.



Seventh Annual Doug Bates Lecture, 2003

NASDTEC Conference 2003

Gene Campbell

First let me say that I am truly honored to be invited to this conference and to present this seventh annual Doug Bates Lecture. When Bart Zabin of New York, the current chairman of NASDTEC's Professional Practices Committee, asked me to present this lecture a few months ago, I felt privileged to be included among those that had preceded me as speakers. As time passed between that invitation and now, I became increasingly anxious about following those preceding speakers—speakers, who in my mind, will always be icons of this organization. Bart was kind enough to send me copies of three earlier lectures, starting with Doug Bates, who for some eleven years served as NASDTEC's legal advisor and counsel, promoter of the organization, resource and friend to its members, and steadfast advocate of high ethical and moral standards for educators nationwide. In addition to Doug, earlier presenters included:

- Paul Longo from California, NASDTEC's current legal counsel and former head of one of the largest professional practices offices in the country;
- Charlie Mackey, head of certification and licensing in New York, two-time president of NASDTEC, chairman and member of numerous NASDTEC committees, including the Professional Practices Committee, and NASDTEC's longest continuous member;
- Adelle Nore, head of professional practices in Washington State and one of the finest and most aggressive investigators of teacher behavior I have known;

 Gene Campbell is former Assistant Commissioner, Colorado Department of Education.

- Martin Bates, son of Doug Bates, who brought us the perspectives of a human resources director and his efforts to implement his father's beliefs and ideals through the screening, hiring, supervision, and retention of educators in his Utah school district; and
- Gary Jones from Missouri, then head of NASDTEC's Professional Practices Committee, who shared his insight into the daily operations and challenges of his state's professional practices unit.

I retired some 10 months ago after serving 30 years with the Colorado Department of Education. Before I go on, I want to take a moment to acknowledge my successor and current Director of the Office of Professional Services for the agency. Dorothy Gotlieb brings a unique background to this position. Among her experiences, Dorothy is a former member and chair of the Colorado State Board of Education, member of the Denver Board of Education, and member of the Colorado House of Representatives, where her role included serving as vice-chair of the House Education Committee. I know that all of you, in keeping with the NASDTEC tradition, will welcome Dorothy to this organization and assist her as you assisted and supported me throughout these many years.

I know that you and I will all learn something between now and the end of this presentation. I have already learned not to accept any more invitations to speak at national conferences. You will learn to be much more selective about who you invite to speak at future lectures. As I read through the earlier Doug Bates lecturers' remarks and recalled what I could about those that I had heard, I struggled to come up with a topic or theme that had not already been addressed. In fact, I struggled for so long that I delayed putting any of these remarks on paper until two days ago. Even though I have had months to prepare for this and certainly did not lack for time, procrastination is a difficult habit to break—but I will get around to it one of these days.

In my search for background information, I of course was led to the most current, comprehensive, and definitive information on certification and licensing: the *2002 NASDTEC Manual on the Preparation and Certification of Educational Personnel*. I might add that with each edition, the Manual continues to improve and I compliment the NASDTEC Executive Committee, the NASDTEC office, the editors, and all member jurisdictions on their efforts to update their information and compile this most excellent publication. I was drawn especially to Section J of the Manual that reports the status of states' professional practices, discipline, and criminal background clearances. When Doug addressed the annual conference in 1997 in Savannah, Georgia,

he noted that some 34 states had policies in place for mandatory criminal background checks or fingerprinting as a certification/licensing requirement or requirement for employment. If I correctly interpreted the chart from the 2002 Manual, 41 states now require fingerprinting. That is a major accomplishment for this country when you consider that only a handful of states were fingerprinting when Colorado enacted its program in 1991. And I attribute this major policy shift in large part to this organization and its persistent advocacy for comprehensive screening of educators in our nation's schools.

For those states that do fingerprint and particularly those that have had programs in place for some time, it is difficult to imagine what it would be like to maintain a credible professional practices function in your states without fingerprinting. After more than ten years of implementing criminal background checks of prospective educators in Colorado, I firmly believe that it is one of the strongest elements of our system. It is one element that our policymakers have continued to refine and expand because of its usefulness in identifying persons who may pose a potential threat to children in our schools. For those states that have strong policies on criminal background checks, reference checks, comprehensive standards of discipline, and sophisticated investigatory and prosecutorial procedures, it may be easy to be critical of those states that have not adopted similar policies. But let us not be too quick to judge. Policies like fingerprinting of educators, mandatory reference checks, or standards of ethical conduct are significant initiatives. They are sensitive, often controversial, politically charged, divisive, costly, and once adopted, difficult to implement. They impact not a small segment of the education population, but the entire profession, and will significantly change the operation of your agency.

In my quest for a topic or theme for this hour, I noted that several of the earlier presenters at these conferences and other NASDTEC events, including the annual Professional Practices Institutes and the regional conferences, have spoken of the emotional, psychological, and sometimes physical damage that unethical and immoral educators can inflict on our children—not to mention the damage that they cause to families, schools, and communities. Our legal counsels continue to remind us of our duty as certification and licensing officials and school district administrators to be diligent, and of the risks we encounter if we fail to perform our duties or are found to be negligent in our efforts to protect children. So I will not recount numerous horrific cases in my home state, although we have certainly had our share. I will, however, refer to certain cases that impacted our program and its development.

During my 30 years with the Colorado Department of Education, 25 of which were in teacher education and licensing, I have also had the opportunity to be directly involved in other areas, including policy analysis and school district accreditation, and to be director of our State Board of Education office. Our agency did not employ a lobbyist. Our commissioners and state boards chose rather to assign legislative liaison roles to directors of the numerous units that made up the agency. So as director of teacher education and licensing, and particularly later as an assistant commissioner, much of my time was spent at the state capitol, discussing legislative initiatives, assisting legislators and drafters, collecting data, monitoring bills, and testifying on proposed legislation that affected our program or the education profession. Working in the legislative arena can be extremely time-consuming, exhausting, frustrating, ugly, nerve-racking, and occasionally rewarding. It is my observation that ever since our voters imposed term limits on our elected representatives, the quality of legislation we are seeing has declined. Although I try not to be cynical about it, it often appears that some legislators are more interested in passing bills than effecting good public policy. I frequently commented to my colleagues that a large part of my job as an agency bureaucrat was making bad public policy into good public practice. In retrospect, I have concluded that this aspect of my job was one of the primary reasons I decided to leave the agency last fall. I simply could not face the prospect of yet another legislative session. Yet, I continue to be fascinated with the public policy process, and since retirement I have been volunteering my time working with a couple of local philanthropic foundations and independent organizations concerned with teacher quality and the development of public policy initiatives to improve the teaching profession in our state.

So I have decided to talk to you today about the experiences and incidents that gave rise to our professional practices function in our licensing unit. Please understand that I am not holding Colorado's system up as a model to any other state or jurisdiction. And I apologize in advance for the provincial references and the lack of a more national focus. But I am reminded by something my tenth-grade speech teacher said to me after I had finished making an in-class presentation and had failed miserably at it. He said, "Let me give you a hint. Next time, talk about something you know." And building a system of professional practices is something I do know a little about.

Those of you who know me, particularly those of you with whom I served on the Executive Committee in the early to mid '90s, know that I am not much of a speech maker. But I do like to tell stories. I often find it helpful to set some context for the situation by recounting some of the history that

brings us to where we are today. In the publication *The History of NASDTEC*, Charlie Mackey and Vere McHenry make reference to the first state licensing of teachers occurring in some eastern states as early as 1825. (By the way, if you have not read or recently re-read the History, I encourage you to do so. It should be required reading for all new members and attendees at this conference. It is an excellent resource on the organization and is helpful in understanding some of the hardships and successes that NASDTEC has had during its 75 years of existence.) Colorado's history does not quite go back that early. Colorado achieved statehood in 1875 and it began credentialing teachers one year later in 1876. In rummaging through some old files that had been left in my predecessor's office when I stepped in as director in 1988, I found a couple of tattered manila folders that contained seemingly random documents recounting some of the history of Colorado's certification and licensing policies and procedures. Much of that had been compiled by a man named Otto Ruff, who had been the supervisor of certification in Colorado since the late 1950s and in fact was the person who initially hired me at the wise age of 25 back in 1972. You will find Otto's name among the past presidents of NASDTEC, from 1970 to 1971. Otto once told me that in his search for the early history of teacher certification in Colorado he had discovered that teacher certification was the second-oldest state function in Colorado government. It was preceded only by branding iron registration. That tells you a little about where early Coloradoans placed their values.

Among these now yellowing papers were records of proceedings and excerpted minutes from the State Board of Examiners, the appointed entity that governed teacher certification in the state. The State Board of Examiners was later abolished and replaced in the late 1940s by an elected State Board of Education. Among those papers was an excerpt of an early meeting of the examiners at which they debated the need for a definition of a teacher. Eventually it was decided to adopt a definition that read as follows: "A teacher shall be a person of good moral character who has mastered the subjects necessary to instruct pupils." I find it fascinating that today, some 100 years or so later, our offices and politicians continue to struggle with these two very issues: teacher behavior and content knowledge. Among the earliest references to anything resembling the topic of professional practices is yet another reference to a meeting in the 1920s at which the examiners discussed whether they needed to promulgate standards concerning behaviors among teachers that would be considered immoral. It was ultimately concluded that no statements would be necessary, because the examiners would be able to determine among themselves whether an act was immoral or not. I guess like many of us, they knew it when they saw it!

Only some vague references spoke to certificates ever being revoked. Some notations appear to indicate that they were or that letters of admonition were issued, but of course no names or details are included. But contained within these folders, which by the way are labeled as “Old Certification Stuff,” there is a small vest-sized black notebook that apparently belonged to someone named Beatrice with some notes, telephone numbers of districts or college officials, which appears to have been maintained in the late 1940s and 1950s. Scattered throughout the pages are cryptic notations and dates of a few revocations or incidents that deserved watching. On one page is a short reminder that Beatrice made to herself that read simply, “Betty M. in Fort Morgan killed her sister. Do not issue.” Could this have been a primitive attempt at a clearinghouse on educator discipline?

There is a clear absence of any activity related to teacher discipline in the 1940s. I suspect that during World War II, we needed all the teachers we could get since both men and women were otherwise engaged in the war effort. Another file that I recall finding in the 1970s when I worked in the unit was a folder simply labeled “Bad Boys.” It contained records, notations, and letters of former supervisors detailing disciplinary actions in the 1950s and continuing throughout the 1970s. Most of cases dealt with such offenses as murder, indecent exposure, public intoxication, assault, and insanity. I recall no record of any offense that resembled what we now refer to as sexual abuse. It became obvious to me that the file had been labeled “Bad Boys” because there were no cases involving “Bad Girls.”

From the records that existed, it is difficult to ascertain what role procedures, adjudicatory methods, or due process played in the early discipline of educators in our state. I do know from experience that Otto had no real tolerance for hearings and the like. There was too much else to do. Otto’s procedure and guarantee of due process usually involved calling the accused into his office, and in a closed-door session confronting them with the evidence and convincing them to voluntarily surrender their certificates so as to avoid the public humiliation of a hearing. It usually worked, and they would sign a statement relinquishing their right to teach. He would then replace the teacher’s file in the cabinet with the inscription “REVOKED” on the front of the folder. No mention of it was ever made. If he failed to convince the educator to surrender the certificate, he then proceeded to send a confidential letter to all school superintendents in the state alerting them to the situation. I recall a postscript on one of his communications to superintendents that simply read, “If you run across a teacher named so and

so and he applies to you for a job, BEWARE. It is said he likes little boys.” That pretty much wrapped up that teacher’s career, unless he chose to move to another state. But it was cost-effective!

In the mid-1970s, the teachers’ association in our state convinced lawmakers to establish a professional practices committee to review discipline cases and advise the State Board on matters of annulment, denial, suspension, and revocation. Apparently they had become disenchanted with the way their teachers were being removed from the profession and the lack of due process afforded them. Otto hated the idea but despite his efforts, the bill passed. Members of the committee, a majority of whom were to be teachers, were to serve without pay but were to be reimbursed for their expenses. However, Otto could never seem to find the money in his budget to pay their expenses and no meeting was ever held. Much to the chagrin of the Colorado Education Association, three years of inactivity by the group was considered intolerable by certain legislators and the statutory language that created it was repealed.

In the wake of the controversy over the elimination of the Professional Practices Committee, and with new leadership in the teacher certification unit, some improvement was made. The legislature had enacted new amendments giving broader discretion to the State Board in disciplinary matters and had delineated certain felony and misdemeanor criminal offenses in statute that could warrant revocation. A part-time position was added to the unit to handle the clerical demands of preparing the paperwork for the director, and legal assistance was enlisted from the attorney general’s office. Standards of unethical behavior were adopted by the Board and rules were put in place to establish consistent procedures, including due process for the affected teacher. But relatively few cases reached the State Board, because without a felony or misdemeanor conviction, the agency was reluctant to pursue other types of inappropriate behavior.

Over the years I have become convinced that most state or even national policies do not appear from a vacuum or some back room in the legislature. New policies are typically in response to an undesirable incident, circumstance, or condition. The public identifies a problem, the press generally makes it known, legislators react with a bill to fix the problem, and agencies are handed the solution to implement—often without the addition of new people or funding. I would like to illustrate how a couple of incidents and circumstances radically changed Colorado’s then sleepy professional practices program.

As I mentioned earlier, I left the unit for a time to pursue some other endeavors within the agency. I returned to the unit as its director in the fall of 1988. Prior to my return, the teacher certification unit had undergone a performance audit by the state auditor's office. I do not know if you have a similar review in your state, but essentially the state auditor sends a team of auditors to your agency to evaluate how you are doing. Often they are fresh out of graduate school sporting shiny new MBAs. They look at the statutes to see if you are implementing them, they examine your work procedures, they look at your records, they look for efficiency, they leave no stone unturned. Ultimately they make recommendations to the general assembly for improvement and they do not get paid to find that everything is going well. The process can take a year. In the course of this yearlong review, they had obtained a computer tape containing files of persons certified and employed to teach in our state. About 40,000 certificate holders and their essential identification information were contained on the tape. Unbeknownst to the unit, the auditors had taken the tape to the Colorado Bureau of Investigation and run it against their files of persons who had been arrested in the state for some felony or misdemeanor offense. Over 50 names came back with affirmative hits and they handed the report to us. My first task as the new director was clear. We had to investigate every one of those hits and take appropriate action. Since the auditor's report was public information, it had already been spread across both of Denver's major newspapers and broadcast on the three major television news channels. We could not explain it away.

It took several months to track down those arrests and ultimately we determined that about 25% of them were never charged. Another 50% were for minor convictions that did not meet our standards for revocation. That left us with about 12 cases that we prepared and took to the Board for disciplinary action. Only a couple of the cases were previously known to us and had already been adjudicated before the State Board. At that point we began working with the Colorado Bureau of Investigation to set up procedures to screen all initial applicants through their system to alert us to any state arrests or convictions in their records. Later, we added renewals to the process. Until this time, our only criminal background screening consisted of a yes/no on our application forms that asked applicants to voluntarily disclose whether or not they had been convicted of any felony or misdemeanor offenses other than minor traffic violations. We did not ask for legislative authority to start running statewide checks. It is public information and as long as you can pay for the check, they will run it for you. Since we were cash-funded, we simply needed the Board to allow us to raise the fees to pay for the checks and they authorized the increase.

Early in the spring of 1989, I received a phone call from a local superintendent I had met earlier in a small town about 30 miles from Denver. It was clear that he was upset, and he proceeded to tell me that he had hired a teacher in January to fill a vacancy left by a teacher who had gone on maternity leave. He explained that the teacher was a real find and had come with good recommendations from a nearby district. The teacher, whom we will call Nick Z., was a male third-grade teacher, Hispanic, bilingual, and paraplegic, having lost the use of his legs in the Vietnam war. The superintendent went to great lengths to assure me that he was fully certified. He then went on to tell me that he had received a call from the elementary principal that morning, who informed the superintendent that Nick Z. had been arrested the night before and charged with three counts of sexual abuse of a child. The principal's main concern seemed to be that he did not have a substitute. The superintendent asked for advice and I suggested to him that he place Nick Z. on indefinite administrative leave until the situation had been resolved by law enforcement, but I added that he would have to pay Nick Z. while on leave because that is what the law required. I also told him to get in touch with his attorney if he had not already done so, and to keep me apprised of any new developments.

As luck would have it, a local reporter in the small community had visited the sheriff's office that morning and obtained a copy of the arrest report. The next day, the local paper reported the arrest. As we would later discover, the small-town reporter was also a stringer for one of the major Denver papers and they began their quest for a story. By the third day, the Denver morning paper was reporting the arrest and had sent a reporter to the local community to find out what they could from the superintendent. But they also went to Nick Z.'s former district, where a local board member had divulged to the reporter that prior to his departure from that district, there had been rumors of Nick Z. inappropriately touching his female students. We would later discover that Nick Z. had been confronted with the allegations and by mutual agreement signed a confidential settlement for his quiet departure from the district one month earlier. He was assured a favorable recommendation.

The story went to the Associated Press and suddenly most of the area papers were reporting the story, each with its own twist. I received calls from a couple of papers and was asked about the case and what we were going to do about it. I tried to say a little as possible but informed the reporter that if the allegations were found to be true, we would likely investigate and determine whether Nick Z. would lose his certificate. But I carefully explained that, on the advice of our legal counsel, I could not discuss the case

or even whether it was under investigation. I started to tell the reporter about our process for revoking a certificate. But, process does not sell paper! The reporter asked me what we were going to do to see that this kind of thing did not happen again. I explained to the reporter that the screening of teachers for employment, reference checking, supervision, and so on were not our responsibility but rather the purview of the local district. And I informed him that the legislature had not given us the authority to do anything about it and without legislation, our hands were tied.

That was a mistake and I knew it as soon as I said it. The next day the story appeared in the paper and the text of the article was pretty accurate. The reporter had done a good job. At least this time I was not misquoted! The problem was in the headline, which read, "State Official Accuses Legislature of Inaction." That is not something bureaucrats should say. Well, we were off. I knew there was no way to correct the damage that had been done. After spending some very uncomfortable minutes in the Commissioner's office explaining myself, I returned to my office hoping to hide for the rest of the day, if not the next month. That afternoon I received a call from a legislative staffer asking me if I could be attend a meeting at the capitol that afternoon. I felt as if I had been summoned to the woodshed. I entered the room and recognized a couple of female legislators with whom I had worked in the past. One of them turned to me and said, "What are we going to do?" We talked about the Nick Z. case and what had possibly gone wrong. After spending more than an hour brainstorming, we discussed some strategies and concepts for legislation. During the course of the conversation, I began to recall some of the strategies that my colleagues from other states had discussed at NASDTEC events and particularly those of Doug Bates, Adelle Nore, Paul Longo, and others who had been to the Western States Certification Conferences. We discussed mandatory reference checks, mandatory school district reporting, checks of the child abuse registry, and a number of other possibilities. At the end of the meeting, I was asked to work with a certain drafter and to have something back in two weeks. As I was leaving, one of the legislators turned to me and asked, "Is there anything else?" With my hand partially covering my mouth to muffle the words, I said, "Well, you know, some states fingerprint." She simply responded, "We will talk."

It was also at about this time that Charlie Mackey had been named chairman of the NASDTEC Professional Practices Committee and had been charged with getting all states to sign an agreement to report their disciplinary actions to the Association as part of the NASDTEC Educator Identification Clearinghouse, so that the information could be shared with other states. My

predecessors had been reluctant to sign the contract because advice from legal counsel suggested that it left the state liable for reporting misinformation, that it could be construed as a conflict with existing confidentiality statutes, and that the use of the social security number as a primary identifier was problematic. I found a copy of the contract with Charlie's letter attached and called Charlie for some additional information. I then met with my then interim Commissioner and explained the circumstances within the context of what I fully expected to be coming down the pike legislatively. After listening patiently to my ramblings and sensing my now obvious paranoia, he leaned back in his chair, folded his arms, and said, "Sometimes you have to do things the right way, and sometimes you have to do the right thing. But I am not signing anything." I immediately went back to my office and put another call in to Charlie. I asked him if it was important who, and at what level of the organization or state government, actually signed the contract. Should it be the Commissioner, the State Board, Governor? After receiving a lengthy civics lesson from Charlie on roles, responsibility, states rights, the three branches of government, and the like, I culled his response to one word. No. After hanging up, I immediately signed the contract myself, mailed it back to Charlie, and buried the copy as far back in the filing cabinet as it would go. It is probably still there. Since then, Colorado has been faithfully reporting to the Clearinghouse.

We now had two separate bills drafted to address issues that the Nick Z. case had raised, but proposed legislation that went far beyond the specific circumstances of that case. (By the way, Nick Z. was eventually convicted of sexual assault on a child by a person in a position of trust and sentenced to a correctional facility and we did revoke his certificate.) We began to circulate the concepts included in the two bills in the summer of 1989. My charge from the sponsors was to meet with all the constituent groups, the teacher and administrator organizations, school boards, PTA, school district attorneys, and others to gather their input on the legislation and attempt to defuse any blockers when the bill was introduced in the next session in January. Much to my surprise, the bills were not strongly opposed by the associations. Even the teachers' association, the Colorado Education Association (CEA), agreed not to oppose the bill if the sponsors would agree to leave existing teachers out of the fingerprinting and fingerprint new teachers only. Concessions were made. However, my phone continued to ring off the hook with calls from human resources directors and small-school superintendents who ranted about the increased workload of employment screening, fingerprinting, and almost every aspect of each bill. Under the fingerprinting legislation, our office would be responsible for fingerprinting and investigating certified

personnel but the local district would be required to fingerprint all other school employees prior to employment. Some alleged that this was a state takeover of hiring and personnel functions of local districts. It was becoming an ugly state versus local control issue. I agreed to meet with a group called the Colorado Association of School Personnel Administrators at their summer retreat. But I really did not know what to tell them, because I fully understood and empathized with their concerns. After all, they were the ones who would be doing the work. I also knew that getting the support of this group meant that we could likely co-opt their superintendents and local boards. So I called Doug Bates in Utah and explained the situation. Doug was understanding and seemed to have a good grasp of the issues. He suggested that I talk to them about many of the issues that he preached to us: the duty of those entrusted with the care of children, liability, standards of guilt in administrative proceedings versus criminal proceedings, and more. I thanked him for his counsel and pondered what Doug had said. I kept coming to the same conclusion, and that was that I could not do it. So I called Doug back and told him I could not do what he had suggested because I really did not know what he knew and I would look like a fool. But I suggested to him that he could do it. I told him that I would pay his salary in Utah for two days and pay his expenses if he would fly to Denver and let me take him to the retreat to talk to the group, and do that which he did so well. He agreed.

I picked him up the day of the meeting and we started driving west of Denver into the mountains. I had asked Doug earlier if he needed anything for his presentation and he had said no. In the car, just to be sure, I asked again and he said he had everything he needed. I gave him copies of the two bills to read as we drove and almost without comment he proceeded to rewrite major sections of both. When he had finished we talked about his changes and I was impressed. I also asked him about his background because I knew very little about the man at that time. I knew he was the attorney for the Utah Department of Education, that he was NASDTEC's attorney, and that he also served as legal counsel for the National Association of State Boards of Education. He told me about his church and how much it meant to him, he talked about his missionary work in Germany during college where he met his wife Eva, he talked of his children and his professional work. He chronicled his schooling and career, which included being a teacher, earning his master's degree and becoming a principal, working in local law enforcement, earning his doctorate in administration, and ultimately his jurist doctorate. He also talked about his volunteer work on weekends at a women's correctional facility helping incarcerated women with domestic legal issues like divorce and child custody. I was impressed and humbled! I asked Doug if he had

any regrets about the directions his life had taken him. He said no, paused for a moment, and said, "But I'm not done yet. I'm thinking about going to medical school. I always wondered what it would be like to be a doctor." To this day, I do not know if he was serious or not.

We arrived at the meeting and Doug was to speak at 2:00, so we had some time to kill before lunch. All of a sudden, Doug turned to me and said, "You know what I need? Some transparencies and markers." "Great," I thought. "Didn't I ask you about this before?" So I went to the resort desk and asked if they had Doug's supplies. No. I asked if they knew where I could get them and again, no. I went back to Doug and reported on what I had found out and he looked disappointed. So I told Doug to go to lunch and that I would catch up with him later. I left the resort in the hills and headed back to the town of Breckenridge about five miles down the mountain. Not an office supply store in site. This is a ski town! I finally found a small print shop that begrudgingly sold me three transparencies and two colored markers they had on hand for \$20. I returned to the resort just in time for Doug's presentation and gave him his supplies, never telling him the source or the cost. By the end of his session and after what seemed to be endless questions to Doug from the fifty or so in attendance, Doug returned to Utah and I waited. But it was clear to me that Doug had won their hearts and their minds. (By the way, Doug never did use those transparencies!) About two weeks later I received a letter from the president of the personnel association thanking me for bringing Doug to the meeting and suggesting some minor amendments. It was done, and Doug had done it!

The bills were introduced in January and encountered little resistance as they worked their way through the legislative process. By May, at the close of the session, both passed. We now had six months to put a program together at the state level and to work with 176 school districts to assist them with implementation. In part, it included:

- Fingerprinting and state criminal background checks on all educators new to the profession or new to the state
- Fingerprinting by local school districts of all non-certificated employees
- Mandatory reference checks to be conducted on all school district employees
- Immunity from liability for school administrators that provide accurate information when providing reference checks, including known allegations of misconduct

- A prohibition against confidential settlement agreements as a means of separation from employment
- Mandatory reporting by the state court system if a person is known by the court to be a school employee and is convicted of any crime
- Mandatory notification of the state agency by the local school district if a school employee is dismissed or resigns based on a conviction or guilty plea
- Mandatory notification of the state agency by a local school district if a teacher is dismissed or resigns based on unlawful behavior involving a child that is supported by a preponderance of evidence
- Mandatory notification of the state agency by local law enforcement agencies and social services agencies if a school employee is suspected of child abuse or neglect
- Mandatory notification of the state agency if a school district reasonably believes that an educator has violated the state's standards and requires disciplinary action
- Department of Education access to the child abuse registry if the Department is currently conducting an investigation
- Mandatory screening of every school district hire with the state agency to determine whether any adverse information has been collected prior to employment
- Mandatory notification of a school district by the department if a school employee is known to have committed a felony or certain misdemeanor crimes

And that is one state's story. We went from having a minimalist professional practices system to one of the most comprehensive systems in the central and western states in one year.

Since 1991, several amendments to the original legislation have passed to strengthen and expand the program. Recently, private schools were given authority to have their educators fingerprinted by the Department and to receive the same information that public schools receive. Advances in technology will do even more for the state in the future. During this last legislative session, the program was further expanded to include, among other things, the fingerprinting of all educators renewing licenses who had not previously been fingerprinted. But I am going to let Dorothy tell you that story another day.

So to those states that do not fingerprint or do not have comprehensive screening programs for educators and school employees, I encourage you to continue to develop your programs. It is in your interest and in the best interests of all states and students in our schools. It is simply a matter of taking advantage of the opportunities or incidents that present themselves, saying some stupid things once in a while, seeking the advice and wisdom that exists within this organization and within your own state, doing some hard work, and waiting until the stars are perfectly aligned.

To all of you, best of luck and good journey!



Eighth Annual Doug Bates Lecture, 2004

Fighting the Battle to Protect Students

Rick Eiserman

As many of you know, for the last eight years I have been with the Georgia Professional Standards Commission, working on the state's certification standards and procedures and with initiatives to streamline our certification process. During my work there I have had little direct involvement with the branch of the organization that enforces professional practices. So I was somewhat surprised when NASDTEC asked me to deliver today's Doug Bates Lecture, since educator ethics and professional practices were his primary area of expertise. I gladly accepted the invitation and, in fact, consider giving this lecture one of the highlights of my work with NASDTEC.

However, while I was delighted to be a speaker, I must confess that I was, and still am, intimidated at the thought of adding my comments to those of the seven previous Bates lecturers. They had all worked more closely with Doug than I have and possessed a wealth of firsthand knowledge about professional practices—each of them having had 20 to 30 years of experience in education. While I was in an army air defense missile unit watching radar scopes, they were in schools working with children. And although I now have 13 years working in my “second” career in education, compared to them I still feel like a beginner. I thought, What of value could I possibly add to what they had already so eloquently stated?

Searching for a theme forced me to reflect on my own experiences as well as those of the previous speakers. I now understand that in spite of our many differences, I actually have much more in common with the previous lecturers than I had realized.

 Rick Eiserman is the Director of Certification Policy for the Georgia Professional Standards Commission and Vice President of NASDTEC.

I had the pleasure of knowing Doug Bates for more than five years. From the moment of our initial handshake at my first NASDTEC meeting, Doug made me feel welcome and he made me feel like I was a special soldier in the never-ending battle to protect and educate students. I quickly developed a high regard for this quiet, soft-spoken man, and that regard continues to grow with each passing year. My increasing respect for Doug comes not from any “hero worship,” but because the more I understand the complexities of professional practices, the more I appreciate his amazing insights, his uncanny ability to focus on the real problems involved with educator misconduct, and his knack for finding workable solutions.

In this presentation, I hope to accomplish three basic goals. First, I want to look back on some of the issues that were important to Doug and review the progress we’ve made in those areas—thanks in no small part to his work. Second, I want to reaffirm the passionate commitment and high ideals that Doug Bates demanded from himself and from all of us who work to provide a safe environment in which our children can learn. And finally, for those who knew Doug as well as those who did not, I hope to trigger a pleasant memory or a gentle reminder of our special time with him and why he had such an impact on us as individuals and as an organization.

An Introduction to Educator Misconduct Issues

I should step back for a moment and relate to you some of my personal background and how I became involved with the issue of teacher misconduct and with Doug’s work. In the early 1970s, I graduated with a bachelor’s degree in education and obtained a Texas teaching certificate with the plan of becoming a high school history teacher. However, my teaching plans were sidetracked when Uncle Sam called me to active military duty. Twenty years later, when I finally retired from the military, I decided to go back to my first love, education, and I went to work for Rickey Haas at Pennsylvania’s Bureau of Teacher Preparation and Certification.

Like most new employees, I immediately began to tackle my job assignments. My areas of responsibility were (1) to supervise the entry of certification data into an ancient-and-medieval computer system and an equally antiquated microfilm system, (2) to work with school districts on determining valid in-field teaching assignments, and (3) to oversee the preparation of educator disciplinary case packets.

It was this third duty that introduced me to the amazing world of educator misconduct with its many lawyers and its own language, full of terms such as *probable cause*, *preponderance of evidence*, *property rights*, *reasonable doubt*, *first-time offender*, and *plea bargain*. Seeing the complex legal process involved with censuring a teacher, I soon began to understand why the area of educator misconduct is so challenging. What was most difficult, however, was reading the specific details of actual disciplinary cases and learning about the ways some teachers harm children. And while I reminded myself that the percentage of teachers who do these acts is a tiny portion of the total number of the teaching force, the fact remains that these acts do take place—and if even one child is harmed in this way, it is one more than any of us should accept.

While we witnessed some disciplinary “success” stories during my first year on the job, I found myself thinking all too often that the “system” failed to adequately protect children. This seemed particularly true in the area of sexual abuse. And while I learned that there were many reasons for this failure, one reason, in particular, stood out.

When confronted with the possibility of teacher misconduct, schools sometimes allow an accused teacher to resign before the allegations are fully investigated. Maybe they don’t want to believe educators are capable of such acts, or maybe they are concerned about expensive lawsuits and embarrassing publicity, or maybe they have other reasons. As we are all aware, this practice is called “passing the trash,” and it enables offenders to quietly leave and resurface in other school systems or in other states. When those individuals reapply for positions in new districts or states, not only do they not have a blemish on their records, they often have glowing letters of reference! While I had not been that surprised that the legal system sometimes seems to fail to protect children, my realization that the education system can be an accomplice was an eye-opener. It is a realization that continues to be one of my most difficult lessons.

Understanding the problem is one thing; knowing how to deal with it is quite another. Reaching back to my military experience, my first thought was that the most appropriate course of action in some of these cases was to shoot someone. I wasn’t exactly clear whether the ones that needed to be shot were the “party of the first part” or the “party of the second part,” but I was confident that some of them needed to be shot—if for no other reason than to set an example and to get everyone else’s attention. But, of course, the attorneys quickly convinced me that this was not a legal course of action in the civilian world. We would have to find other solutions.

If you are unaware or in denial about the frequency of these cases, as many people both inside and outside of our profession are, then let me read you some Associated Press headlines. They come from five different states, and they all appeared on the same day:

- “Former Educator Sentenced for Sex Crimes”
- “Teacher Convicted of Having Sex with Two Students”
- “Abuse Nets Ex-Teacher a Year in Jail”
- “Gilbert Teacher Charged with Sexual Misconduct with Student”
- “Lawsuit Says School Officials Failed to Protect Young Girl from Teacher”

These cases not only *can* happen, they *do* happen more frequently than we realize. Our task, and the heart of Doug’s work, is how best to address these incidents and protect innocent children as well as innocent educators. It is a most difficult task. No one wants to believe that another human being, especially someone called “teacher,” could do some of the things described in these cases. Many of us are involved in either reviewing their credentials and issuing state teaching certificates or in hiring them and placing them with our kids. The sense of betrayal can be overwhelming. Working in professional practices is, indeed, a most difficult task.

The Doug Bates Effect

I was present at the 1997 NASDTEC Conference in Savannah, Georgia, when Doug personally delivered the first Doug Bates Lecture. He openly shared the story of his ongoing battle with cancer in order to, as he put it, “give it a purpose.” Only Doug could address such an emotional issue with humor and place it in perfect context, saying, “a lot of worries that I’d had are gone. I don’t worry about osteoporosis or the collapse of the Social Security system or any of a number of those things.” Doug shared with us a funny anecdote about his boss in the Utah education department and how he loved lawyer jokes. He told us how he had informed his boss of his cancer and the less-than-positive prognosis. Doug said he told him, “I’ve got some good news and some bad news. The bad news is that I’ve got pancreatic cancer. . . . The good news is, at least it got the lawyer.”

In that same presentation, Doug reached deep within himself and reminded us that “we don’t really develop compassion until something hits somebody that we care about. That is when we learn to care, and that is where we get the

resolve to change things.” With wise thoughts like that, now you can see the reason I am concerned about following in the footsteps of previous Bates lecturers—most especially Doug!

So Many Reasons to Act

My on-the-job training continued long after Rickey Haas and the lawyers convinced me that shooting someone was not an option. In fact, a recent event in one of our states clearly reinforces the notion that we cannot, and must not, shoot first and ask questions later.

Not long ago, a 13-year-old student was removed from class for being disruptive and, in retaliation against his teacher, the student reported that the instructor had assaulted him during the previous week. Although the teacher denied the charge, a police investigation was initiated—as we would all expect, or at least hope. During the investigation, rumors flew through the school and the community, but these rumors all proved baseless. The police cleared the teacher of any wrongdoing. Unfortunately this vindication came too late: before the investigation was completed, the teacher committed suicide.

The outcome of this particular case is both shocking and sad, but it is *not* a reason to *not act*. Instead, it is a reason *to act*, but to do so quickly, appropriately, fairly, and thoroughly. We must protect our children, but we must also remember two fundamental principles: first, allegations—no matter how terrible—are still allegations, and second, assumptions do not take the place of an investigation. As Doug himself said in his lecture: “We are not in the business, once we have ascertained that an event actually took place, of protecting the applicant or certificate holder. Our first task, then, in terms of protecting both the child and the educators, is to encourage reporting and then to determine whether the alleged misconduct actually took place.”

In order to be effective in our reporting of misconduct, we must first have a clear understanding of what constitutes educator misconduct. Although sexual abuse by teachers often grabs the headlines, we all know that there are many misconduct cases that do not involve sexual abuse. I experienced, just as you have in your states, cases in which teachers emotionally abused students, misappropriated school funds, falsified their teaching certificates or academic degrees, misused school equipment to download pornography, provided alcohol or drugs to students, and committed test fraud (especially in high-stakes situations). These types of cases differ from the sexual abuse cases—maybe they are not deserving of a shooting—but they still harm children and tarnish the teaching profession.

Seeing these different kinds of abuse, it became clear that there are at least two categories of offenders. One category consists of basically good and decent individuals who just do stupid things. But the other category is much more dangerous; it includes the predators who purposely seek out and harm our children. Both must somehow be addressed, but sometimes we must make choices in assigning our limited resources.

A Tradition of Advocacy

At the 1998 NASDTEC Conference in South Dakota, my friend Paul Longo delivered the second Doug Bates Lecture. I had served for several years on the NASDTEC Professional Practices Committee while Paul was chair of that important committee. It was another opportunity to learn this business from the “masters.” In South Dakota, Paul had the privilege of being introduced by Doug himself, who continued to exceed the expectations of his doctors in his fight against cancer. During the lecture, Paul challenged the audience to travel back in their minds and remember when they were eight, ten, or twelve years old. He asked everyone to think about their surroundings and attitudes as a child: what embarrassed us, how we sought praise from adults, how we were sometimes afraid to speak out, and how we worried about being humiliated, especially in front of our friends. Next, Paul asked us to think about how our lives were affected by authority figures such as parents, relatives, pastors, coaches, or teachers and, in particular, how these people made us feel. Within the scope of a few short minutes, Paul had brought home to us just how vulnerable children are and how easy it is for a teacher to betray a child’s trust—causing devastating, long-term effects on a child’s life.

The third Doug Bates Lecture, held in 1999 in Santa Rosa, California, was delivered by New York’s Charlie Mackey, a long-time NASDTEC member and an administrator with more than 30 years of experience in education. Once again Doug attended the lecture, confounding and mystifying his doctors with his will to live.

Charlie began his presentation by providing a brief history of NASDTEC’s involvement in the field of educator misconduct and the development of the Educator Identification Clearinghouse. But I think the most compelling part of his lecture was when he questioned the popular mindset of policymakers in determining which criteria make a good teacher. Charlie’s message, which continues to resonate several years later, was a cautionary statement warning us not to be too narrowly focused on academic majors and content knowledge when assessing teacher quality.

Charlie compared teaching to a tripod or a three-legged stool. The first leg represents “rigorous preservice preparation and credentialing.” The second leg, he said, represents “continuous renewal and development as a professional.” And the third leg—the one that is frequently overlooked—represents “competent and ethical practice.” According to Charlie, if any one of the three educational legs is out of proportion, the educator will be out of balance. I vividly remember him saying to us: “I challenge you—indeed, the millions of children in our schools and their parents challenge you—to focus your attention on high character standards for teachers at all junctures in their career, from preparation to credentialing to continuing practice.” That is a challenge we must all remember every day.

Placing character near the top of the list of teaching qualifications is not a new trend in education. In my own state of Georgia we have original certificates issued in the year 1900 that included words attesting to the “applicant’s good moral and professional character.” Our 1930 certificates included the statement, “. . .having furnished satisfactory evidence of good moral character and scholastic training. . .” I wonder how many state certificates in use today use similar words. Georgia’s no longer do.

In the 2003 Doug Bates Lecture, Colorado’s Gene Campbell cited his state’s 100-year-old statutory definition of the word “teacher”—a definition beautiful and refined in its simplicity. The Colorado law states: “A teacher shall be a person of good moral character who has mastered the subjects necessary to instruct pupils.” As a footnote, Gene, who had completed more than 30 years of educational service, said that he found it ironic that a century after that definition was presented, his state was still struggling with teacher behavior and content knowledge.

Now it may be that some of our definitions of character have changed over time. One of my favorite sets of teacher behavior standards is found in the 1872 Local Rules from the Oldest Wooden Schoolhouse in St. Augustine, Florida. Copies of these rules have been published in a number of books and articles. Let me share just a few with you:

- “Any teacher who smokes, uses liquor in any form, frequents pool or public halls, or gets shaved in a barber shop will give good reason to suspect his worth, intention, integrity and honesty.”
- “Women teachers who marry or engage in unseemly conduct will be dismissed.”

- “After ten hours in school, the teachers may spend the remaining time reading the Bible or other good books.”
- “The teacher who performs his labor faithfully and without fault for five years will be given an increase of twenty-five cents per week in his pay, providing the Board of Education approves.”

While times and standards have certainly changed, I keep hearing in my mind Charlie Mackey’s warning to educators that we should not forget about teacher character. As we focus more and more on meeting the No Child Left Behind (NCLB) Act mandate to employ “highly qualified” teachers, as we deal with teacher shortages, as we react to pressures to quickly move career switchers into the classroom . . . How are we as educators to incorporate the consideration of a teacher’s moral character into these tasks?

No Room for Spectators

Let me return again to my early career experiences in Pennsylvania. By the way, it should be noted that Pennsylvania has progressed a long way in its screening and disciplining of educators since I was there. They now have an active “De-Certification Section” within their Department of Education legal group, complete with designated attorneys, support staff, and effective procedures. For a number of years now they have actively participated in NASDTEC’s national conferences and with the Professional Practices Institutes. Clearly my departure from that state paved the way for progress.

In my Pennsylvania experience, as I read numerous interviews, court transcripts, and even as I testified at hearings, I came to the realization that there is absolutely no room for spectators when faced with the problem of educator misconduct. You cannot be exposed to the horrors of some of these cases and stand on the sidelines. Active participation is mandatory!

Imagine the horror and regret of educators when they learned about a case of one of their colleagues, a highly successful, highly regarded teacher, best known for his dedication to special education children. He regularly gave up his personal time to take those special children on two- to three-day field trips. What was not known for years was that this teacher frequently managed to slip away from the adult chaperons and take sexual advantage of these children. When an allegation of abuse finally did surface and an investigation took place, the teacher’s defense attorneys so intensely questioned the bewildered special education student that doubts were raised that anything had happened at all. But terrible things had taken place, and eventually the truth surfaced; that so-called teacher is no longer in the classroom.

At a Professional Practices Institute two years ago, one of the speakers was a victim of teacher misconduct. She had been carefully selected by one of her male teachers, who gradually manipulated her into having sex. Now, years later she is a journalist and has written about the impact of that event on her life. Her extremely well-written thoughts, which described the intense feelings she had both during and after the event, moved and challenged everyone in the room. The act of sexual misconduct suddenly had a real face, a real voice, and a real story—and hers is, as of yet, incomplete. The event affects her still, and only time will tell how well she ultimately heals.

We have another type of case currently ongoing in Georgia. An eleven-year-old student was recently starved and beaten to death by her parents. Many of the potential problem signs, the bruises, etc., had apparently been there for a while. The parents are now on trial and the prosecutors are seeking the death penalty. What is different about this case is that two school staff members—a guidance counselor and a nurse—have not only lost their jobs but have been arraigned for failure to report evidence of child abuse. None of us can just be spectators.

Regardless of your role in education, when it comes to educator misconduct, there is no room for spectators. We cannot hear it or think about it often enough. If you work in preparing individuals to become teachers, you are a player. If you deal with certifying teachers, you are a player. If you are involved in the continuing professional development of teachers, you are a player. If you are an education policymaker, when it comes to educator misconduct, you are a player. So step up to the plate and participate.

Further Inspirations

I remember the 2000 Doug Bates Lecture in Portland, Maine, where Adelle Nore from Washington shared her expertise and passion for protecting kids in a lecture that included a question-and-answer discussion session with the audience. Adelle had graciously shared her experiences with me during several lengthy phone discussions while I was learning the ropes in Pennsylvania. I was also present at the 2001 lecture in Virginia where Martin Bates, the son of the now deceased Doug Bates, talked about the views of a school district's human resources director as they related to Doug's beliefs and ideals. My friend Gary Jones delivered the 2002 lecture in St. Louis, Missouri, reflecting on his law enforcement experiences, his experience with educator discipline in Missouri, and his plans for his work as chairman of the NASDTEC Professional Practices Committee.

In my mind I can easily see an image of Doug at NASDTEC meetings. He was a tall, thin man who was usually dressed in blue jeans and a white dress shirt that had the cuffs folded up twice. He wore walking shoes or maybe tennis shoes, but seldom wore a watch. During the sessions, he would often sit in the back of the room and appeared to be writing frantically, as if he was oblivious to what was going on in the session. In reality, he was fully aware of everything. At the next break Doug would show someone a draft of an idea to improve our operations or a draft of potential changes that could be made to our bylaws, all of which he had jotted down during the session. At the same time, he would discuss the issues raised by the speaker at a depth of understanding most of us had not grasped.

Several of you in this room attended the 1996 conference here in Pittsburgh and remember one of Doug's walking tours of the downtown area, complete with running commentary on the city's history, geography, and architecture and a host of other interesting tidbits. Then there was the time I sat next to him at one of the small-group dinner outings. I was having barbequed something, and Doug, the consummate teacher, proceeded to run through the origin and history of regional barbeque sauce recipes, turning a meal into an educational moment. An educator, a former law enforcement official, a lawyer, a marathon runner, a friend, and a true Renaissance Man—that was Doug.

It is essential for us to keep in mind that we, the members of NASDTEC, both individually within our states and collectively as a national organization, continue to make great strides in improving the professional conduct of educators. But we also know that there are many challenges still to be met. I would like each one of you in this room to ask yourself some questions. "What am I doing in my job, in my state, to help protect children? And then, as Doug Bates would have demanded, ask yourself, "What can I do better?"

Progress in Fingerprinting

One thing we can do to improve our protection of students is to use all the screening tools at our disposal such as fingerprinting and background checks. When Doug spoke in Savannah in 1997, he reported that 27 states were doing fingerprinting and/or background checks for employment, certification, or both. But what was really amazing was not just the number of states that were doing the screening, but the increase in the number of states screening, which had doubled between 1992 and 1997. The 2002 NASDTEC *Manual on*

the Preparation and Certification of Educational Personnel indicated the number of states using fingerprinting/background checks had increased to 41, while the new 2004 Manual reports that the figure has increased to 45 states.

But while we should applaud our progress in adopting tools such as background checks, we should also ask ourselves how we can better use those tools to screen prospective educators. For example, if we fingerprint for employment, should we fingerprint for the initial teaching certificate even before employment takes place? And what about those in state-approved programs that occur prior to student teaching—should we fingerprint for admission to those? And if we are currently putting teachers in classrooms before getting fingerprinting results, what can be done to change that?

The Clearinghouse: Continuing to Address “Passing the Trash”

The NASDTEC Educator Identification Clearinghouse, while tracing its roots to the early 1960s, has been operating since about 1987 in a relatively stable format. Many of us rely heavily on this information to help eliminate “passing the trash,” and we should be thankful for the existence of this centralized repository for professional discipline data. It is the only such database in this country, and it can be an effective safety net for preventing predators from moving easily from one jurisdiction to another.

From 1987 through 2001, approximately 17,492 disciplinary actions were reported to the database. Keep in mind that the Clearinghouse records reflect the laws and regulations of each member state. Action by one state does not compel action in another state. However, the Clearinghouse is not well known outside of our organization. In April of this year, NASDTEC sent a letter to the editor of *Education Week* in response to an article about sexual abuse in schools that quoted a study as saying, “solid national data on its prevalence are sorely needed.” The author of the study was contracted by the U.S. Department of Education to do research on sexual abuse in schools as a part of the provisions of the No Child Left Behind Act. However, the *Education Week* article did not mention NASDTEC or the Clearinghouse.

Again, we should take pride in the Clearinghouse, and especially this year when, for the first time since its inception, all 50 states reported disciplinary actions. That is a significant milestone. However, we must temper our pride in that achievement with the knowledge that a few states only reported one or two disciplinary actions. It is hard to imagine, even in our smaller states,

that there is not more going on. We should ask ourselves: Am I really doing everything I should in this area? Does my state have a mandatory reporting requirement? Do we truly address the issue of passing the trash? Do we do our part to report our disciplinary actions to the clearinghouse for access by all NASDTEC members? If not, what can I do to bring about change?

Ongoing Professional Practices Efforts

One step NASDTEC has taken to bring about change in the way misconduct is handled is the formation of its Professional Practices Institute, which has grown from “discussion sessions” within our western region to an annual event. The eighth annual Institute will be held this year in Kansas City, Missouri, and will draw a large group of dedicated professional practices administrators from around the country.

These professional practices forums have yielded many important insights on the problems surrounding educator misconduct. One of the most important is the need to ask the right questions of ourselves about how we are managing the problem. For example, a state code of ethics can be an effective tool to provide clear guidance on acceptable state boundaries for professional behavior. Does your state have a code of ethics? If so, is it a meaningful, living, breathing document—or simply a document filed away in a dusty notebook sitting on a shelf?

Another set of questions we should ask ourselves concerns state legislation and how it shapes our disciplinary procedures. Do your state laws offer the best guidelines for dealing objectively and expeditiously with these issues? Do you communicate with legislators and other players to help these policymakers understand the issues? If you do not communicate with policymakers, ask yourself who does and how can you make sure they know and understand the issues.

Having a state system process for handling misconduct issues is absolutely essential, but by itself is not enough. You must ask yourself if the state integrates its strategy for combating educator misconduct into its entire education system. Do your state-approved educator preparation programs adequately cover the standards of professional and ethical conduct? Are those pursuing alternative routes to certification trained on professional ethics? Do the leadership certificate programs that develop future administrators address this topic sufficiently? Do we work with the local school systems and human resources directors to ensure that they understand the importance

of background checks and proper screening in their hiring procedures? Do we provide professional conduct training at new-teacher orientations or as part of our state's professional development programs? How proactive are we in promoting understanding and awareness of ethical behavior before problems occur? What can I do to make it better?

Doing What We Can to Make It Better

I mentioned in the beginning of this presentation that I would explain how I developed my understanding of educator misconduct and how that understanding has shaped the views that I have presented this afternoon. My 20-year military experience was not really that different from the background of most of us in this room. The army taught me the importance of leadership, organizational structure, training, logistics, planning, and unit cohesion and morale.

Many of these same principles apply to dealing with educator misconduct. We have all been preparing for or actively engaged in fighting battles. We have all dealt with issues of courage and justice—sometimes standing up for or fighting for what is right, on behalf of those who may not always be able to stand up for themselves. We have all faced many obstacles, been outnumbered with insufficient resources, and sometimes lost battles—but hopefully not many wars. We have all been touched by the suffering that victims endure and the courage it takes to come forward, especially when others around us take no action. And all of us understand and appreciate that battles can only be won when many good people, big and small, become engaged in a struggle to do what is right and to make the system better. Educator ethics and professional practices is, indeed, a most difficult task.

I think Doug Bates fully understood that we are all soldiers in an ongoing battle for decency and justice in every classroom for every child. He also knew that the most important things we can do are to passionately care and to step up to the plate and do what is right. As Doug so often reminded us: “Remember, it’s all about the kids!” I sincerely thank all of you here for your kind patience and for all the incredible things you do for our kids.



Ninth Annual Doug Bates Lecture, 2005

In Support of Professional Practices Programs and Pioneers

Bart Zabin

When I learned that I would be delivering the Doug Bates Lecture and would need to write a speech, I did what I usually do when I have some time to play with: I put it off, convincing myself that I would get to it just as soon as I had attended to the more immediate tasks facing me at work and at home. Well, fast-forward to me getting on the plane to come here without a prepared speech in hand and you might imagine that the pressure I wasn't feeling earlier on had now intensified a bit. As a result, I've been somewhat preoccupied the past few days and, regrettably, I missed some of the opportunities to network and connect with colleagues, which is always a highlight of attending this conference. Anyway, I am here, I have some things to say and I am very pleased to be with you. I will tell you up front that I tend to be a lot more comfortable in small-group settings so I am feeling pretty darn nervous speaking before such a large audience of distinguished educational professionals. You've probably heard this advice, I am not sure of its origin, but several well-intentioned people suggested that a surefire way for me to relax up here would be for me to look out over the crowd and imagine all of you in your underwear. And so, forgive me but I tested this theory while I was being introduced and I am now ready to report two things with authority: (1) it doesn't work and (2) it was not a pretty picture. I'm glad you're laughing. Humor is a strategy I often try to employ to defuse awkward or stressful situations or to just have a little fun, but I worried that this sort of irreverence might be considered inappropriate given the serious nature of the Doug Bates Lecture. As a safeguard, I asked my wife, Lisa, what she thought about me using the "picture the audience in their underwear" comment as an



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icebreaker and she, true to her nature, gave me a quick, nonfiltered response that convinced me it would probably be okay: she said, “the only way it would be inappropriate is if you thought it was a pretty picture.”

Throughout my comments today I will be referring to professional practices. I will be using the term “professional practices” to define the NASDTEC agenda, programs, and resources for promoting high ethical standards for all educators and for addressing prevention and action strategies pertaining to educator misconduct. I will also use the term to define the work of NASDTEC members—typically attorneys, investigators, administrators, or educators who are directly associated with state-level educator disciplinary processes, the revocation and denial of certificates, or the administration of a code of ethics.

A Passion Deep and Never-ending

The Doug Bates Lecture series began in 1997, when Doug spoke at the annual conference in Savannah, Georgia. I was fortunate to be in attendance for his address. I first met Doug a year earlier in Colorado Springs at the very first Professional Practices Institute. It was at that conference that I learned Doug had recently been diagnosed with the pancreatic cancer that eventually took his life in May of 2000. I did not know Doug very well but on all the occasions that I had the pleasure of sharing his company I recall being struck by how unassuming and undistracted he seemed to be despite the many personal things that I suspected he had weighing heavily on his mind. In my experience, I found Doug to be very generous, always available, and very interested in the work of others. He exuded a quiet and gentle aura, conjuring up an image of calm water that you sensed ran quite deep. He never seemed to need to say a whole lot to make his presence or the worth of his contributions known to the group at large. I believe that is a very rare and admirable trait. I suspect Doug came to be aligned with professional practices as a natural extension of his commitment to, and love for, education. It is evident that Doug believed that every kid deserved a good education and understood that the only way to accomplish that goal was to make sure that every educator was competent, had content knowledge and a strong ethical character.

I believe that Doug was the right person at the right time to help NASDTEC bridge its history with its future. During his time with this organization, Doug possessed the most articulate and impassioned voice for bringing attention to the topic of professional practices as it related to addressing educator misconduct. His quiet, determined, Gary Cooper good-guy way of

dealing openly with the often disturbingly graphic subject matter of educator abuse and misconduct brought badly needed attention and legitimacy to the discussion about how we protect children from educators who are unfit to guide, instruct, and influence them. Doug expended his own personal currency of integrity and credibility to advance a professional practices agenda within this organization at a time when these issues did not receive the support or attention they enjoy today. In doing so, he helped secure a legitimate place at the table for the NASDTEC professional practices agenda and programs. Since that time, professional practices programs have continued to gain prominence within the organization and I would contend that the Educator Identification Clearinghouse and the annual Professional Practices Institute now represent two of the most critically important resources that this organization offers its membership and the public at large. And so, I cannot think of a nicer or more enlightened way for this organization to honor Doug's memory than to have established a permanent place on the agenda of this annual meeting where each year a speaker is provided with an open forum to talk about professional practices issues with the hope that the conversation will encourage each of us to find our way of contributing to practices that promote rigorous ethical standards for all educators.

In paying tribute to Doug I am also mindful of the many other fine individuals, past and present, who served this organization with distinction and contributed significantly to its rich history. These individuals saw the big picture early on and understood that the dialogue about quality education and quality educators should be global in scope and not limited to a provincial perspective. They understood that achieving the NASDTEC vision that all students have educators that are held to high standards would only be accomplished through a collective effort.

I cannot name all those that deserve mention for their notable service but I would like to acknowledge the five past presidents that are here with us today: Jane Meyer from Alabama, Ted Andrews from Washington, Thomas Elliott from Virginia, Doris Anselmo from Rhode Island, and Sam Swofford from California. All of these individuals served in a leadership position at a time when professional practices were gaining momentum as an important tenet of the organization's agenda. They each deserve credit for supporting and advancing this important agenda. In addition, Ted Andrews should be recognized as one of the early voices and advocates for professional practices.

I must also mention another past president. He is well known to all of us and I regret he is not in attendance with us today. I'm talking about a man very special to me, a fellow New Yorker, by way of Rhode Island—my good friend and former boss, Charlie Mackey. Charlie was president of NASDTEC twice, chaired and served on the Professional Practices Committee at its inception back when it was called the Clearinghouse Committee, and held many other leadership positions within the organization. He is one of the original architects of the Educator Identification Clearinghouse and one of the very early voices for professional practices. Some of you will recall his wonderful speech when he delivered the third Doug Bates Lecture in Santa Rosa, California, in 1999. I believe Charlie exemplifies the gold standard for service to this organization and the ideal qualities that our very best educators possess—high intelligence, clearly defined principles, stellar character, and great humanity. I would not be here today, or a part of the NASDTEC community, if not for Charlie's direct encouragement and support. He is as fine a man as I've ever had the pleasure of knowing, and I credit him with instilling in me a great desire to serve the public as admirably as I am able through the position I hold in state service.

Another Courageous Crusader

As I stand here today I am also conscious of those who stood here before me at the podium to deliver this lecture: Doug Bates, Paul Longo, Charlie Mackey, Adelle Nore, Martin Bates, Gary Jones, Gene Campbell, and Rick Eiserman. I am very proud to be counted among this fine group of individuals and I recognize that it is a great honor to be selected for this event. My role on the Professional Practices Committee over the years has afforded me the opportunity to participate in the selection process for this lecture series. I am aware that when the executive board extends an invitation to make this address it is intended in large part as a way by which the board acknowledges and honors the candidate for his or her personal contribution to the field of education and work associated with professional practices.

Now before you start thinking I'm up here trying to toot my own horn I need to let you know that I was not this year's selected candidate. That honor was bestowed upon Doris Anselmo, my friend and NASDTEC colleague from Rhode Island. Many of you know Doris as Director of Teacher Preparation, Certification and Professional Development at the Rhode Island Department of Education. And, of course, she also served on the executive board for a number of years and was elected president of this organization in 2000. What some of you may not know is that Doris has long been a crusader

for the advancement of professional practices within this organization, in her home state, and throughout the Northeast region, where she served as an active member of the Northeast Professional Practices Task Force for many years. The task force was formed in 1995, as a way for those of us in our region responsible for addressing state-level educator misconduct, to get together and conduct meetings once or twice a year. The task force provides a great opportunity to network; share training; exchange information and expertise; and establish a sense of mission, cooperation, and support. I'm sure that you will not be surprised to learn that Doris was responsible for some of our most memorable meetings on the campus of Salve Regina in beautiful Newport, Rhode Island.

When I telephoned Doris to tell her that she had been selected to deliver this speech, I could tell she was surprised and greatly honored. When she accepted the invitation she told me she was feeling quite well, that the cancer she has been fighting so gallantly over the past few years seemed to be in remission, but she cautioned me that her health condition could change. And sadly, in April we learned that it had. I know Doris was genuinely excited about the opportunity to deliver the Doug Bates Lecture and regrets not being able to fulfill the honor extended to her. Those of you who know Doris know that she is a force to be reckoned with. She is a remarkable woman—strong, spirited, feisty and fun-loving but also all business, and you better watch your step. As testament to her great spirit and as evidence of her affection for the many friends she has made within this organization and throughout the entire educational community, she has traveled here to be with us in San Antonio. Doris, I know you're in the audience and I hope I have not upset you with my comments but I want you to know on behalf of all your NASDTEC friends and colleagues that you are in our hearts and in our prayers. We love you and wish you all God's grace as you continue to fight your illness.

And, on a personal note, please know that I'm on your team and proud to be up here pinch-hitting for you today.

[At this point in the presentation, Doris Anselmo is invited to come to the podium and say a few words; she speaks for several minutes.]

A Daily Battle

Day after day, year in and year out, throughout the course of our children's most important developmental stages we pack them off to school in the morning and trust, sometimes blindly, that the adults responsible for their welfare during the day are emotionally and ethically fit to assume that

responsibility. Sadly, we know that sometimes this is a dangerous and costly assumption. Much of our attention is rightly focused on educators who prey on students to gratify their own sexual needs, but there are many other types of misconduct cases that we must also be concerned about: administrators who steal school funds; educators who view pornography on the classroom computers; educators with drug, alcohol, or gambling addictions; teachers who buy drugs from students, sell drugs to students, or use them with students; teachers who intimidate, bully, verbally abuse, and sometimes assault their students; educators who falsify their credentials, undermine the integrity of student assessment tests, or change student grades without authorization.

I don't know what percentage of teachers pose a threat to the students for whom they are responsible. The available empirical data are limited and not very clear-cut. The research is at best controversial. But I do know this: we are extremely busy dealing with educator misconduct issues in New York and I suspect you are experiencing the same challenges in your jurisdiction. Every day new cases come to our attention and it seems that the more we go looking, the more we find. No one can disagree that incidents of serious misconduct happen way more often than they ought to, and if it is your child—God forbid—who is harmed by a teacher or you are the person that has to try to provide answers as to how such an incident could have happened, I can assure you that there will not be much comfort in knowing that the child's experience, while tragic, was statistically quite rare.

In my experience of investigating serious complaints against teachers I have seen many, many cases involving unconscionable acts of egregious conduct by educators. Mostly, but not always, they are men who behave in reckless, deceitful, arrogant, cunning, pathetic, dangerous, uncaring, and abusive ways. Mostly, they are selfish, immature, needy, weak characters. Often, they believe that they can get away with the misconduct. And sometimes, perhaps a lot more often than we'd like to accept, they're right. Many of the cases we see are straightforward—bad teachers doing bad things. Others are more complicated and involve good teachers doing bad things. In the wake of almost every case where an educator misuses his or her access, influence, and authority to enlist a student in illicit conduct there is significant damage to all those involved. Typically, educator sexual misconduct involves a conscious, calculated manipulation of the student-teacher relationship. These deliberate acts often inflict immeasurable damage to a young person's spirit, weakening and sometimes destroying a student's capacity to trust and maintain healthy relationships. I want to be clear, I am not an alarmist—I do not believe there is a pedophile in every classroom and I have no interest in bashing teachers or denigrating the profession.

In fact, I believe professional practices are essential for maintaining the integrity of the profession. Most teachers do not pose a threat to our children and many fine teachers do not receive the credit they deserve for the great work they do or the real difference they make in the lives of children. But the fact that most educators do not pose a threat to students should in no way lessen our resolve to ensure that effective systems are in place to deal with the ones we know do pose a threat. We don't lock the doors to our homes because we think that all of our neighbors are thieves and we don't keep our money in banks because we suspect there's a crook around every corner waiting to rob us. We take these reasonable precautions to minimize our risks because it's prudent to do so—and most especially when our most valuable assets are at stake. This is essentially what professional practices are—prudent measures to minimize the exposure of children to the risks posed to them by those who will gain access to them in school settings and may wish to do them harm.

Protecting Our Most Valuable Asset

Everyone is a stakeholder, but those of us who work in the field of education bear a particular responsibility for the development, implementation, and maintenance of these prudent measures. They must be developed, implemented, and maintained at every point on the educator continuum, including preparation, licensing, employment, continuing professional development, and disciplinary due process.

Acts of abuse are rooted in the imbalance and manipulation of power. This unfortunate phenomenon transcends educator misconduct and seems to be rooted in the dark recesses of human nature. We will not stop all of these tragic transgressions from occurring, but I strongly believe we can decrease the number of occurrences in our schools.

From my vantage point as chair of the Professional Practices Committee for the last three years I have been afforded the great opportunity to meet and work with many dedicated professionals who are dealing with professional practices issues in their jurisdictions. I am heartened by the energy and commitment of these individuals and by the many fine programs that are up and running in various states and jurisdictions. There is no doubt that we're making progress but I must also caution you that the picture is not all rosy. We cannot afford to spend too much time leaning back on our heels or patting ourselves on the back. There is plenty left for us to do. For instance, some states and jurisdictions are not participating actively in the Clearinghouse, do not have trained investigators or any full-time staff dedicated to these issues,

and are not developing professional practices programs. Equally troubling is the fact that some jurisdictions are losing ground rather than gaining it. Let's be very clear here: there are no schools where children are not at risk—these problems exist everywhere. Inaction is dangerous and naïve. I understand the challenges caused by resource reality, but we'd better get our priorities in order because if we do not attend to these issues we are leaving our most valuable and vulnerable assets at risk.

In closing I want to thank the executive board members, the standing committee members and the membership at large for the tremendous support and camaraderie extended to me over the years. Please know, my participation in NASDTEC and my associations with all of you have truly enriched me both personally and professionally.

A Living Legacy

I would like to end my comments today by reading you an essay written by a man I came to know through my work as an investigator in New York. His name is Paul Ehmann and he is a victim of educator sexual abuse. For most of his life, he maintained the secret of his abuse. When he decided to come forward about eight years ago, he was instrumental in helping substantiate his case by arranging a meeting with the perpetrator and taping the resulting discussion about his abuse. The recording was used as evidence in a hearing, and the teacher's certificate was revoked. Paul, like so many others I have come to know that were victimized by a teacher, is a decent and courageous person who has gone on with his life. He has not, however, been able to fully escape the pain and damage caused by the abuse he experienced as a 12-year-old boy. His essay is a poignant and sometimes chilling reminder that the residual effects of abuse linger on long after the actual abuse.

Just 857 Words

Paul Ehmann

December 2002

Coffee and the paper. My morning ritual. I scan the national news and the local stuff. Today I notice there are no articles about children being molested. I breathe a denying sigh of relief and wonder if normal people think with the caution flag out like I do.

I've done all I could to forget, piles of drugs, barrels of alcohol, promiscuous sex, and now food for my comfort. Therapists have told me "It's a miracle that you're even alive." How do you reconcile that? Fifteen years of therapy have not unleashed a complete and deserved

self-forgiveness. It's been thirty-five years since I was sexually trespassed but it seems like yesterday. It always comes back. Shame exacts an unyielding grip.

It's sadly ironic that even the notion of simply noticing no articles about sexual abuse can set me up to remember my own. This day my memories are vague and easily shaken off. Tomorrow's newspaper will bring on a reason why recall lives on. In perpetuity.

Another day shot full of memories. Today I'll hear and read more how the Catholic Church is hiding the perpetrators while defending and monitoring themselves. No wonder kids keep the secret. The more powerful the trauma, the longer it takes to fully acknowledge it. Where we come from, we learn not to pay attention to details. So we carry the secret along with the empty sentences that cannot describe our hurt. There are no words for this type of shame, no words for the unfounded guilt, no words for a child's new-found lack of expression, no words for the secrets kept, no words for stolen dignity, no words the love lost, no words for shattered trust, no words for the imperceptible injury, no words for the coldly dispatched spirit, no words for lingering memories. There is only anger and frustration.

Again today I'm forced to remember. The respite went unnoticed. It's good to leave memories unopened for awhile. They can return with fury.

The light was red and I was idling. Out of the corner of my right eye I saw the silhouette. I'd seen it from the other side too many times. I have the displeasure of running into him on occasion (we still live in the same town and at one time on the same street) and the degree of emotional strain I feel is different each time. This time the air is sucked out of me, momentarily asthmatic with disbelief. Won't he ever go away? He was staring straight ahead, profiled inside the safety of his car, but I could see his face clearly. [In my mind's eye the safety glass shatters as I fly through the unopened window, grab his beefy neck and twist the life out of him. I weep at the realization that even his death gives life to memory.] I turn left and, pulling away, know that once again he hasn't seen me. I instinctively know that I'll keep this incident to myself and once again, the secret is hidden.

So here it is. A despicable man makes a decision to abandon all social responsibility, he snatches the unquestionable innocence of a kid and soils forever the never-to-be-known dreams of an unstained child. He drops his baggage on the short-legged table of a boy barely twelve and walks away from the experience drunk with sexual relief while stuffing the spirit of a boy into his pocket like a matchbook.

Two days have gone by and I've barked at my wife, kicked the cat, began sleeping late and, worst of all, I've gone silent. I don't have a spare word. Searching my soul with brutal introspection, trying to wrap my arms around hope, I squeeze the empty air and shrug with expected disappointment at another hopeless moment. This is the crime. It's one of time. Time after frustrating time the memory comes back. And the unanswerable questions. Could I have done something different? What if I'd...? Jeezus, I wish...

Secrecy is the common thread among survivors of sexual abuse. There is never anyone to tell. Under threat of violence comes the inherent knowledge that you won't be believed so you keep it to yourself. Don't share this, you tell yourself, and a child relies on his now distorted intuition for answers. If you expose him, he'll deny it (he said so), and you'll be branded a faggot or a poet. The confusion is unbearable. The cycle of shame cannot be broken by a child, not without the support of an adult.

This "moment" of selfish sexual gratification endured by a child thirty-five years ago will steal three or four days from my present. It sneaks up on me like a night shadow and in an instant I become the trembling, confused, secretive child who withstood the abuse. I am affected and carry a profoundly unnatural sorrow, like my heart is attached to a lead sinker. I do not wallow. A survivor's will to live uncannily floats to the surface while the persistent resentment of having this uninvited emotional attachment to a pedophile loiters in an unsafe harbor.

Memory has no statute of limitations.

Thank you and be well!