

11/13/68

First Supplement to Memorandum 68-107

Subject: Study 63 - The Evidence Code (Psychotherapist-Patient Privilege)

We sent you a copy of the Tentative Recommendation on the Psychotherapist-Patient Privilege with Memorandum 68-107. We distributed a copy of this tentative recommendation to the persons on our Evidence Code list (more than 150 persons) and sent a news release to various legal newspapers indicating the tentative recommendation had been released for comment.

General Reaction to Tentative Recommendation

Compared to the number of persons interested in our other recommendations, the volume of comments on the tentative recommendation was overwhelming. We received (as of November 12) a total of 86 letters containing comments. We have reproduced--and attach as exhibits to this supplement--36 of the letters and indicate in Exhibit XXXVII the source of the other 50 letters. All of the letters expressed general approval of the tentative recommendation. Generally, we have not reproduced letters expressing general approval unless they make some objection to the recommendation or give specific illustrations of the need for the legislation. Letters expressing approval because "the recommendation meets problems I have encountered in my practice" were not generally reproduced. As Exhibit XXXVII indicates, most of the letters not reproduced were from persons practicing psychotherapy who would be covered by the extended privilege. A few of these letters, however, were from psychiatrists or psychologists who now have the privilege.

It is apparent from the number of persons responding to our request for comments that the psychotherapists who would be included in the expanded privilege strongly feel that extension of the privilege is needed. Eighty-six letters is an impressive total considering the short time that was provided for distribution, review, and comment.

Some of the lawyers commenting on the tentative recommendation display that they have a clear understanding of the problems involved in extending the privilege. For example, Dr. Bernard L. Diamond (Exhibit XIV) comments:

The new evidence code of California which provides a special psychotherapist-patient privilege has worked out extremely well and I think it fair to say that California now has the best law on privilege in the country today.

I do agree that the psychotherapist-patient privilege should be extended to social workers, marriage counselors, and all other relevant professional groups. I think you should pay no heed, whatsoever, to the complaint by physicians that psychotherapy should be restricted to those with a medical licensure. That day is long since past, and the medical groups which have opposed the extension of privilege to non-medical professional groups are being very short-sighted and selfish in their interest, which, in this case, is opposed to the public interest.

Other typical comments are set out below.

In my opinion the legislation proposed by the Commission in this matter is sound because it serves an important social purpose and is sufficiently limited so as to be within the present policy of the evidence code in this matter. Since I am involved in many domestic relations matters, the proposed legislation would have a strong impact on my practice. However, I believe that the Commission's recommendation would be in the best interests of both my clients and of the clients of the opposing counsel. [Exhibit I]

* * * * *

(1) The proposed extension of the privilege to persons whose activities fall within the general orbit of psychological treatment and therapy is basically sound on the policy considerations discussed in the tentative recommendation. The proposal begins to become somewhat more debatable as it moves in the direction of lower professional qualifications and less clearly-recognized medical-type services.

For example, the "marriage counselor," with his totally unprofessional attempt to deal constructively with two patients "for the price of one," may not be accepted in all quarters as a person whose services are so skilled and subtle and valuable that they should have the aid of the privilege.

However, if there is to be error in the extension of the privilege, it should be on the side of over-extension rather than excessive limitation, and this is true because the basic policy consideration is very strong. [Exhibit II]

* * * * *

In recent times I have been made keenly aware of the problems which arise because of the lack of protection for the confidential communications which arise between "client" and school psychologists, licensed clinical social workers and marriage, family and child counselors. It seems clear to me that "client" or "patient", if you prefer that usage, makes no distinction, and should not reasonably be expected to make a distinction when deciding whether to divulge confidential communications to a psychiatrist or licensed psychologist, to a school psychologist, licensed clinical social worker or marriage, family or social counselor. [Exhibit XIII]

* * * * *

Other general comments from knowledgeable persons include the following.

Judge Andreen of Conciliation Court, Superior Court, Fresno--

Exhibit III.

Our Conciliation Court occasionally refers couples who need long term psychotherapy to licensed marriage counselors. Since these people are contemplating divorce they obviously need the protection of the privilege if they are going to reveal all aspects of their lives.

We endorse the recommendations as desirable legislation.

* * * * *

Legal Counsel for California Hospital Association--Exhibit IV

. . . I wish to report that we have reviewed the tentative recommendation relating to the psychotherapist-patient privilege and believe that the recommendation is sound and should be proposed as this has been an area of confusion and is a matter of concern to hospitals. In view of the fact that more and more of this care will be given in the private sector, the problem is going to become more acute.

* * * * *

Legal Counsel for California State Psychological Association--

Exhibit VII

I have received your recommendations relating to the privileges article of the Evidence Code and reviewed this with great interest. I represent the California State Psychological Association which is deeply interested in the subject matter of your recommendations. Quite independently we had arrived at recommendations almost identical to those proposed by you for amending Section 1010 and Section 1012 of the Evidence Code. In one small area [to be discussed later in this supplement] we differ with your recommendations and urge that you reconsider.

* * * * *

Judge Joseph G. Babich, Superior Court, County of Sacramento--

Exhibit IX

Since I have been actively engaged in family law, not only in the court but serving on commissions to amend our present domestic relations law, I find that there is a definite need to grant privileges to marriage, family and child counselors. These people have shown themselves to be competent and are doing good work in the field of keeping marriages together. I agree with the Commission that the therapy of families which results in saving families from divorce is a far greater social gain than the social loss that may occur by not being able to "get all the facts". Accordingly, I endorse the Commission's recommendation.

* * * * *

Conference of Conciliation Courts (Los Angeles)--Exhibit X

Subject to a technical question, discussed later in this supplement "find your proposals to be in every respect satisfactory."

* * * * *

A number of the letters--some attached and some not reproduced--commenting on the tentative recommendation stated that the writer's experience demonstrated the need for a privilege; a few letters include specific case studies where the lack of a privilege had an adverse result. See Exhibit XVI (Robert L. Dean, who is responsible for supporting this legislation on behalf of the clinical social workers); Exhibit XVII (Family Service Agency of Marin County); Exhibit XVIII (Cedars-Sinai Medical Center); Exhibit XIX (Professor, School of Social Work, USC); Exhibit XX (Clinical Social Worker); Exhibit XXI (Valley Mental Health Center, Studio City).

The major qualification on approval of the tentative recommendation was that it did not go far enough. This is discussed later in this supplement. Another qualification was a comment by several clinical social workers that marriage, family, and child counselors and school psychologists were not "worthy" of the privilege and should have "higher standards" if they are to have such a privilege. See Exhibit XXXV. This objection, of course, ignores the fact that the privilege is given to protect the patient against disclosure of his confidential communications. It is not a privilege given to a psychotherapist in recognition of high standards. Moreover, the standards for marriage, family, and child counselors and for school psychologists are high. Compare the statement of Dr. Diamond (quoted above).

Suggested Changes

1. Extension of privilege to all employees of family service agencies. A number of commentators suggest that the psychotherapist-patient privilege be extended to communications to all employees

of accredited family service agencies. See Exhibit XXVIII (Mrs. Hannah F. Flack), Exhibit XXX (Catholic Social Service of the Diocese of Oakland), Exhibit XXXI (Greater Bay Area Council of Family Social Agencies), Exhibit XXXII (Jewish Family Service of Alameda and Contra Costa Counties), Exhibit XXXIII (Family Service Agency of Central Alameda County), Exhibit XXXIV (Mrs. Rose Blum, clinical social worker). On the other hand, a number of family service agencies approved the recommended legislation as drafted. See Exhibit XXII (Family Service Center, Fresno), Exhibit XXIII (Family Service Association of Palo Alto and Los Altos), Exhibit XXV (Family Service Center, Fresno). The difficulty in so extending the privilege is that there is no adequate legal definition of the persons who would qualify as a psychotherapist. Determining the employees of the family service agency who would be considered psychotherapists would present a serious problem. Moreover, no statutory standards are established for the qualifications of such employees. The staff recommends that the privilege not be extended to employees of family service agencies. We believe that the answer to the problem raised by the various family service agencies is indicated in Exhibit XXV (Family Service Center, Fresno--"Our staff has among its members people licensed as marriage, family and child counselors and people in the process of becoming licensed clinical social workers.") It would not appear unduly burdensome for any competent psychotherapist to qualify as a psychologist, clinical social worker, or marriage, family and child counselor. It should also be noted that under the psychotherapist-patient privilege, the privilege covers "information . . . transmitted between a patient and

his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than . . . those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose of the consultation" Thus, communications to unlicensed persons for transmittal and review by a psychotherapist who is covered by the privilege would be protected. The staff believes that the need for extending the privilege to all employees of family service agencies is not so great as to justify introducing the uncertainty that would exist if the privilege were so extended.

2. Extension to school social workers. Ernest F. Witte, Dean, School of Social Work, San Diego State College, comments (Exhibit XXIV):

The proposed changes being recommended by the California Law Revision Commission to protect by law the confidential communications of licensed school psychologists, clinical social workers, and marriage, family and child counselors within the scope of the psychotherapist-patient privileges seems so eminently sensible that I trust it will be recommended to and enacted by the California Legislature. Such legislation would remove a serious handicap for these practitioners. I know from personal knowledge the difficulties which the lack of protection your Commission now proposes to offer, has posed for clinical social workers and I am gratified that the difficulty is in process of being eliminated.

Is it possible that school social workers (sometimes known here in California as visiting teachers) could also be covered in your recommendations? They are subject to educational and other requirements under the Educational Code and their position in relation to their practice in the school system is not unlike certain of those practitioners you propose to accord privileged communication by law.

The staff recommends against extending the privilege to school social workers. Where the school social worker is collecting information for transmission to the school psychologist the privilege would apply. It would not and should not, however, apply where the social worker

is working on a case in connection with the county probation department or county welfare department. It must be recognized that the privilege belongs to the patient, not the psychotherapist, and we believe that extension of the privilege to school social workers would create more problems than it would solve.

3. Deletion of "or examination" from Section 1012 (page 12 of tentative recommendation). Irwin Leff, Counsel for the California State Psychological Association, approves the tentative recommendation but objects to the deletion of the words "or examination" from Section 1012 (Exhibit VII):

However, we believe that your recommended change in Section 1012, to eliminate "or examination" is a move in the wrong direction. We have had raised with us by school psychologists in San Mateo County the fact that they have been told by school authorities that students referred to school psychologists for "examination" at the request of the school administration or a teacher are not "patients" and therefore the privilege does not apply. Our response has been that the inclusion of "or submits to an examination" in Section 1011 indicates that it applies to a non-volitional patient-psychotherapist relationship as well as that of a voluntary patient. In support of this such a case as Kramer v. Policy Holders' Life Ins. Ass'n (1935) 5 C.A. 2d 380, arising under Section 991, would seem to so hold. Eliminating "or examination" from Section 1012 might be taken as a substantive change negatively affecting school psychologists. This is clearly not your intent and I suggest the change would accomplish nothing and should not be made.

The staff believes that this objection is not a valid one. The deletion of "or examination" broadens rather than restricts the scope of the section. Moreover, the official Comment to the section indicates that no substantive change is made. See also the last paragraph of the Comment to Section 1010 on page 11 of the tentative recommendation. Note that a contrary view to that of Mr. Leff is taken by the writer of Exhibit XXXVI, Dr. Leslie A. Davison, Asst. Clinical Professor of Medical Psychology (Psychiatry), who comments:

I commend your tentative recommendations concerning extension of the psychotherapist-patient privileged communication to school counselors, licensed clinical social workers, and licensed marriage, family or child counselors. I concur in your reasoning that these professionals establish essentially the same sorts of relationships with clients as do psychiatrist and psychologist psychotherapists and that their work with their clients requires the same protection of communication. I sincerely hope that the legislation is enacted.

In your proposal for legislation you strike out "examination" noting that "consultation" is broad enough to cover this. Presumably the law presently covers any relationship between "psychotherapist" as presently defined and that psychotherapist's patient. Your interpretation to that effect was clarifying to me since I had sometimes wondered if communications to me in my role as psychodiagnostician were covered in the same way as those I receive in my role as psychotherapist.

4. Restriction of the patient-litigant exception. Evidence Code

Section 1016 provides the so-called patient-litigant exception to the psychotherapist-patient privilege:

1016. There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by:

- (a) The patient;
- (b) Any party claiming through or under the patient;
- (c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or
- (d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.

After pointing out that the psychotherapist-patient privilege has worked out extremely well in practice and that the privilege should be extended as proposed in the tentative recommendation, Dr. Diamond (Exhibit XIV) comments:

One specific difficulty has arisen with the new evidence code, a difficulty which was also present with the old law: when a patient files a suit for personal injury he automatically waives his privilege. This has caused real hardship. In certain instances that I know about litigants have been inhibited from filing a legitimate personal injury suit for fear of having a past psychiatric record disclosed. In another case, the plaintiff eliminated all reference to "mental pain and suffering" from a suit for physical injury in the hope of preventing an extensive psychiatric record from being publicly disclosed. The defendants still insisted on their right to access to the psychiatric record and the plaintiff was subject to the risk of public disclosure of psychiatric material which might have been very damaging.

The law, as it operates today may effectively deprive a person of his right to file a personal injury suit (or a malpractice suit, and possibly a child custody action) in that fear of public disclosure of past psychiatric treatment (with psychiatric records containing derogatory information) may force him to refrain from taking legitimate legal action. This is particularly likely to be so with public figures, politicians, public office holders, etc., who can be badly hurt by disclosure of previous psychiatric treatment.

I am familiar with, and I generally agree with, the legal principle that a litigant cannot hide behind his own medical record. But something should be done to remedy the unjust situation that now exists. Perhaps there can be some way of restricting access to the record, or to limit the scope of the deposition, or to prohibit blanket subpoenas of medical records with resultant "fishing expeditions".

Furthermore, when a litigant waives his privilege by filing suit for personal injury he may have no idea whatsoever as to what he is waiving. He may believe that his psychiatric record contains only innocuous material, but it may, in actual fact, contain all sorts of derogatory comments, diagnoses, implications of sexual perversion, etc., etc., none of which the patient-litigant knows about. He is, therefore, in the unfortunate position of waiving his right to confidentiality thinking that is a harmless thing to do, yet he will end up doing much harm to himself.

I recommend that the law be changed to provide for the automatic waiver of the psychotherapist-patient privilege only when the plaintiff claimed damage for psychological injury or where the nature of the suit clearly raises relevant issues of the litigant's mental state.

There may be merit to Dr. Diamond's suggestion. Consider, however, the defendant in the personal injury action who may be deprived of evidence that is important to his case. Dr. Diamond suggests a very significant change in existing law and the staff believes that we should not recommend such a change without a careful research study and wide distribution for comment. If the Commission believes that this suggestion should be given careful study, the staff will prepare a memorandum on it for a future meeting. We strongly recommend against attempting to include any revision of the patient-litigant exception in our recommendation to the 1969 Legislature.

5. Exception for evidence needed by defendant in a criminal case. Attorney Fred Kilbride approves the tentative recommendation but suggests that the psychotherapist-patient privilege be restricted by adding a new exception that would cover evidence needed by the accused in a criminal case to prepare for trial. See Exhibit II. He is particularly concerned about a case where a disturbed child makes a false charge of sexual misconduct against the defendant in a criminal case charged with child molestation. He questions whether children are influenced by the existence of the privilege and suggests that perhaps the privilege should not apply where a child under the age of 14 is the patient.

When it drafted the Evidence Code, the Commission considered including an exception to the psychotherapist-patient privilege for evidence needed by the accused in a criminal action. After considering the views of all interested persons, the Commission determined not to include such an exception. Various exceptions were included that cover particular kinds of cases: Evidence Code Sections 1017 (no privilege if psychotherapist appointed by court order), 1018 (no privilege if services of psychotherapist sought to enable or aid anyone to commit crime or tort or to escape detection after the commission of crime or tort), 1024 (no privilege "if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger." These exceptions were considered sufficient. Nevertheless, if the Commission desires to

provide an exception to cover use of evidence concerning the character of the alleged victim of a crime for which a defendant is being prosecuted, the following exception might be added:

1027. There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient where the patient is the victim of the crime for which the defendant in a criminal action is being prosecuted and such evidence is offered by the defendant to prove the mental or emotional condition of the patient.

This section is consistent with the policy expressed in Evidence Code Section 1103, which provides:

1103. In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if such evidence is:

(a) Offered by the defendant to prove conduct of the victim in conformity with such character or trait of character.

(b) Offered by the prosecution to rebut evidence adduced by the defendant under subdivision (a).

The suggested new section, if the Commission desires to include it in the recommendation, would not be a change in existing law that is so substantial that we would suggest that it not be included but be deferred for later study. It is strictly a matter of policy whether such an exception is a desirable one.

6. Exception for defamation cases. Attorney Albert J. Forn (Exhibit VIII) generally favors the recommendation but suggests that an exception be provided to the privilege where the patient is the defendant in a defamation action and the privileged communication was defamatory of the plaintiff. It seems obvious that the damage to a plaintiff when a defamatory statement is made in confidence to a psychotherapist in the course of treatment is exceedingly small.

The psychotherapist obviously will be able to evaluate whether the statement is true and the number of persons who will have knowledge of the statement is limited to the psychotherapist and those persons to whom disclosure is necessary for treatment. On the other hand, the proposed exception would offer the plaintiff in a defamation action an opportunity to embarrass the defendant in cases where the information served no real value to the plaintiff. The staff recommends against including any such exception in the statute.

Respectfully submitted,

John H. DeMouly
Executive Secretary

First Supp. Memo 68-107

EXHIBIT I

LAW OFFICES

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25 October 1968

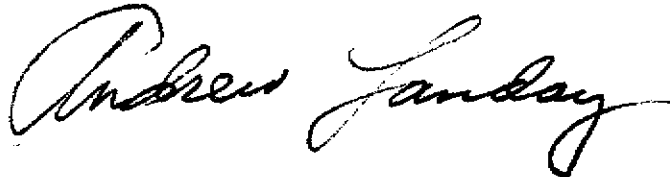
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I have carefully examined the Commission's tentative recommendation relating to the psychotherapist-patient privilege.

In my opinion the legislation proposed by the Commission in this matter is sound because it serves an important social purpose and is sufficiently limited so as to be within the present policy of the evidence code in this matter. Since I am involved in many domestic relations matters, the proposed legislation would have a strong impact on my practice. However, I believe that the Commission's recommendation would be in the best interests of both my clients and of the clients of the opposing counsel.

Very truly yours,



AL:v

FRED KILBRIDE
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October 25, 1968

John H. DeMouilly
Executive Secretary
California Law Review Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

Here are my comments on the tentative recommendations of the Law Review Commission, October 21, 1968 Revision, on the subject of extension of the psycho-therapist-patient privilege:

(1) The proposed extension of the privilege to persons whose activities fall within the general orbit of psychological treatment and therapy is basically sound on the policy considerations discussed in the tentative recommendation. The proposal begins to become somewhat more debatable as it moves in the direction of lower professional qualifications and less clearly-recognized medical-type services.

For example, the "marriage counselor," with his totally unprofessional attempt to deal constructively with two patients "for the price of one," may not be accepted in all quarters as a person whose services are so skilled and subtle and valuable that they should have the aid of the privilege.

However, if there is to be error in the extension of the privilege, it should be on the side of over-extension rather than excessive limitation, and this is true because the basic policy consideration is very strong.

(2) More importantly, I wish to suggest a consideration which has not yet been singled out in your

John H. DeMouilly
Executive Secretary

October 25, 1968
Page Two

previous publications on this subject, and which therefore may have somehow escaped close attention:

I suggest strongly that before final recommendations are promulgated the commission focus its attention closely on the question of whether the extended psychotherapist privilege should exist in the case of children under the age of fourteen.

First, it is questionable whether the child patient will consider the matter of secrecy of his disclosures, or, if considering it, he would be much influenced by it in deciding whether to confide in the therapist. Children are moved by the skill of the therapist, and are little influenced by legal considerations or by the wishes of their parents. Hence, the privilege will have no effect except on the minds of such parents as may be strongly concerned about the availability of the privilege for their children's disclosures. It is submitted that such parents are generally unlikely to see the point of obtaining psychotherapy for the children in the first place.

Second, it should be noted that the age of fourteen is the borderline age for the serious crime of child molestation. It is suggested that in such criminal cases, where disturbed children often manufacture fantasies and falsehoods of sexual misconduct against them, the value of the privilege may be outweighed by the importance of giving the defendant the possibility of what may be his only avenue of defense, that is the testimony of the child's psychotherapist. Perhaps the privilege should be amended so as to exempt cases in which the disclosures are needed by the accused in criminal cases to prepare for trial. Such provision would also avoid constitutional problems.

Apart from the foregoing two considerations, you have my respectful opinion that the tentative revision is sound.

Very truly yours,



FRED KILBRIDE

FK:lc

Superior Court

DEPARTMENT SEVEN
FRESNO, CALIFORNIA

KENNETH ANDREEN
JUDGE

October 28, 1968.

California Law Revision Commission,
School of Law,
Stanford University,
Stanford, California. 94305

Attention: John H. DeMouly,
Executive Secretary.


Gentlemen:

We have reviewed the tentative recommendation relating to the California Evidence Code (The psychotherapist-patient privilege).

Our Conciliation Court occasionally refers couples who need long term psychotherapy to licensed marriage counselors. Since these people are contemplating divorce they obviously need the protection of the privilege if they are going to reveal all aspects of their lives.

We endorse the recommendations as desirable legislation.

Very truly yours,


KENNETH ANDREEN
Judge of the Superior Court

KA:m

JOSEPH D. PEELER
 JOHN M. ROBINSON
 MELVIN H. WILSON
 DAVID R. EVANS
 JAMES E. LUDLAM
 DENALD S. KELLY
 JESSE P. CHALLEY
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 MURRAY D. KARPIN
 STUART I. PEELER
 BRUCE A. BEVAN, JR.
 RALPH S. BRIDGSON
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 THOMAS J. KELLY
 RICHARD T. AREY
 RICHARD A. DE MOULLY, JR.
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 EDWARD J. RISSDAN
 DONALD J. DREW
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 LEONARD G. CASTRO
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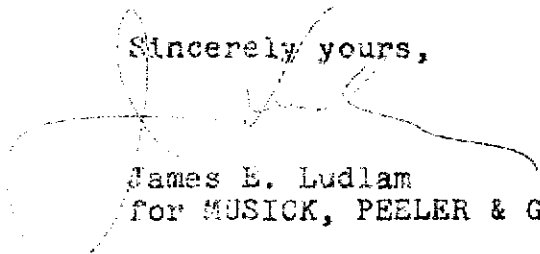
October 28, 1968

Mr. John H. DeMouly
 Executive Secretary
 California Law Revision Commission
 School of Law
 Stanford University
 Stanford, California 94305

Dear Mr. DeMouly:

As Legal Counsel for the California Hospital Association I wish to report that we have reviewed the tentative recommendation relating to the psychotherapist-patient privilege and believe that the recommendation is sound and should be proposed as this has been an area of confusion and is a matter of concern to hospitals. In view of the fact that more and more of this care will be given in the private sector, the problem is going to become more acute.

Sincerely yours,



James E. Ludlam
 for MUSICK, PEELER & GARRETT

JEL:k

First Supp. Memo 68-107

EXHIBIT V

Edmund Herman

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October 29, 1968

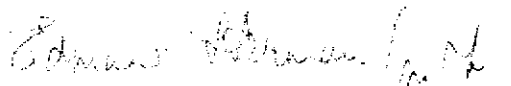
California Law Revision Commission
School of Law
Stanford University
Stanford, Calif. 94305

Attention: John H. DeMouilly

Gentlemen:

This is in answer to your letter of transmittal, dated October 21, 1968, re psychotherapist-patient privilege. Your recommendation with the explanatory comments is written very well. The language is clear and the reasons for the legislation are most persuasive. I most heartily commend the commission for the work done in connection with the aforementioned recommended legislation.

Sincerely,



Edmund Herman

First Suppl Memo 68-107

EXHIBIT VI

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JAMES M. GATTEY

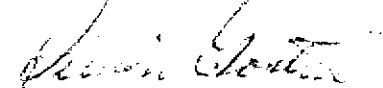
October 29, 1968

John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California

Dear Mr. DeMouilly:

I have received a copy of the Law Revision Commission's tentative recommendations relating to the Evidence Codes sent out by you under your letter of October 21, 1968. I agree with the recommendations as contained in the accompanying documentation and feel that the reasons for the proposed changes are well set forth within the documentation itself.

Very truly yours,



Irwin Gostin

IG/sv

EXHIBIT VII

DARWIN, ROSENTHAL & LEFF

ATTORNEYS AT LAW

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October 29, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Tentative Recommendation #63, Dated October 21, 1968

Gentlemen:

I have received your recommendations relating to the privileges article of the Evidence Code and reviewed this with great interest. I represent the California State Psychological Association which is deeply interested in the subject matter of your recommendations. Quite independently we had arrived at recommendations almost identical to those proposed by you for amending Section 1010 and Section 1012 of the Evidence Code. In one small area we differ with your recommendations and urge that you reconsider.

The amendment to Section 1010 meets with our wholehearted support. School psychologists, whether licensed psychologists or not, should be in a position to receive confidential communications from those with whom they are working in a professional relationship and be protected from the requirement of testifying in court against the wishes of such person. The same holds true for clinical social workers and marriage, family and child counselors.

However, we believe that your recommended change in Section 1012, to eliminate "or examination" is a move in the wrong direction. We have had raised with us by school psychologists in San Mateo County the fact that they have been told by school authorities that students referred to school psychologists for "examination" at the request of the school administration or a teacher are not "patients" and therefore the privilege does not apply. Our response has been that the inclusion of "or submits to an examination" in Section 1011 indicates that it applies to a non-volitional patient-psychotherapist relationship as well as that of a voluntary patient. In support of this such a case as Kramer v. Policy Holders' Life Ins. Ass'n (1935) 5 C.A. 2d 380, arising under Section 991, would seem to so hold. Eliminating "or examination" from Section 1012 might be taken as a substantive

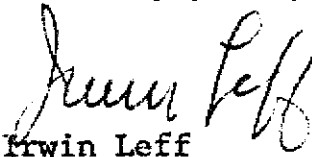
California Law Revision Commission
October 29, 1968
Page 2

change negatively affecting school psychologists. This is clearly not your intent and I suggest the change would accomplish nothing and should not be made.

We strongly support your proposed amendment to Section 1012 to include the group therapy situation. As you suggested on page 8 of your recommendation, the present language "persons...to whom disclosure is reasonably necessary for...the accomplishment of the purpose of the consultation" would probably include other group therapy patients. Including this in Section 1012 removes any doubt.

The California State Psychological Association will support in Sacramento your efforts to make the changes proposed, except for the deletion of "or examination" from Section 1012.

Sincerely yours,


Irwin Leff

IL:val

First Supp. Memo 68-107

EXHIBIT VIII

ALBERT J. FORN
ATTORNEY AT LAW
SUITE 401 COAST FEDERAL BUILDING
315 WEST NINTH STREET
LOS ANGELES, CALIFORNIA 90015
TELEPHONE 622-4577

October 29, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. DeMouilly, Executive Secretary

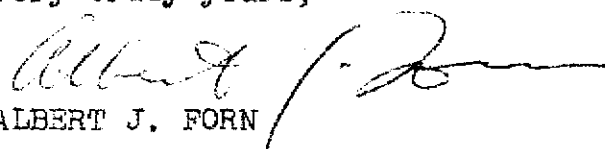
Dear Sir:

Regarding the tentative recommendation relating to the Evidence Code — enlarging the psychotherapist-patient privilege — generally I favor the recommendation. However, I believe that one important exception should be made, and that is, that the privilege may not be invoked when the patient is a defendant in a libel or slander or other defamation suit, and the privileged communication was defamatory of the plaintiff.

It is one thing to protect the patient from criminal liability or related liability where he might be said to have been tricked into testifying against himself. It is quite another matter to permit a purportedly confidential communication to result in the defamation of another person. I can visualize situations where school teachers, in particular, would require the protection that my proposed exception would give.

In analogous situations, where an employer has defamed an employee through the vehicle of a privileged communication to the California Department of Employment, the employee may suffer serious financial loss because of an inability to get another job, and yet the employee has no effective remedy against the employer.

Very truly yours,


ALBERT J. FORN

AJF:zm

Superior Court of the State of California
County of Sacramento

JOSEPH G. BABICH
JUDGE

October 31, 1968

SACRAMENTO, CALIFORNIA

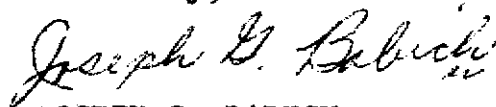
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Sirs:

This will acknowledge receipt of your tentative recommendations relating to the Evidence Code encompassing the psychotherapist-patient privilege as revised October 21, 1968. I feel that the Commission's approach is a valid one and I agree with their findings and recommendations.

Since I have been actively engaged in family law, not only in the court but serving on commissions to amend our present domestic relations law, I find that there is a definite need to grant privileges to marriage, family and child counselors. These people have shown themselves to be competent and are doing good work in the field of keeping marriages together. I agree with the Commission that the therapy of families which results in saving families from divorce is a far greater social gain than the social loss that may occur by not being able to "get all the facts". Accordingly, I endorse the Commission's recommendation.

Sincerely,



JOSEPH G. BABICH
Judge of the Superior Court

JGB:er

Conference of Conciliation Courts

ROOM 241, COURTHOUSE
111 N. HILL STREET
LOS ANGELES, CA. 90012
625-3414

OFFICERS

October 31, 1968

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Judge, Presiding, Family Court Dept.
Superior Court
Los Angeles, Ca. 90012

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Marriage Counseling Service
Detroit, Michigan 48226

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Circuit Court Judge
Detroit, Michigan 48226

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Marriage Counselor
Los Angeles, Ca. 90012

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Meyer Elkin
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Los Angeles, Ca. 90012

PAST PRESIDENTS

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Los Angeles, California

Hon. Verna O. Warner (1964)
San Diego, California

Hon. Frank B. Blum (1965)
San Mateo, California

Hon. James E. Cunningham, Sr. (1966)
San Bernardino, California

Hon. Laurens L. Henderson (1967)
Phoenix, Arizona

Hon. Timothy I. O'Reilly (1968)
San Luis Obispo, California

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

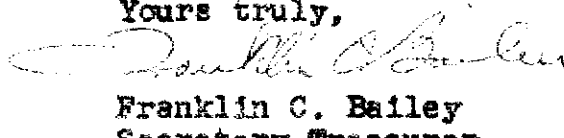
Attention John H. De Moully, Executive Secretary

Gentlemen:

I have received today the material outlining the proposed revisions in the Evidence Code relating to privilege communications and have forwarded material to California members of the Legislative Committee of this Conference.

On my own behalf I have reviewed the material and am in hearty accord with the objectives and the proposals from your Commission. I would raise only one question with reference to the language found in both sections of the proposed revisions, "discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation." I would raise the questions as to the effect this would have on the presence of trainees, interns and others who may fit that restriction only very loosely. If the interpretation can be made safely that interns and other types of trainees are adequately protected by this language, as well as protecting the privilege of the clients, then I find your proposals to be in every respect satisfactory.

Yours truly,



Franklin C. Bailey
Secretary-Treasurer

FCB:dvg

1st Supp. Memo 68-107

EXHIBIT XI

LAW OFFICES OF
JOHNSTON, LUCKING & HITCH

620 EAST MAIN STREET

POST OFFICE DRAWER 1417

VENTURA, CALIFORNIA 93001

TELEPHONE (209) 646-3724

BRUCE JOHNSTON
WILLIAM A. LUCKING, JR.
LEON F. HITCH
KARL H. BERTELSEN

October 30, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen:

In response to your request of October 21, 1968, I have looked over your tentative recommendation relating to the psycho-therapist-patient privilege. As a former psychology major at UCLA, a former director of the Ventura County Mental Health Association and as a sometime trial attorney, I have some interest in this privilege.

In my opinion, your suggestions are very well taken. While sharing your concern about undue extensions of any privilege, I believe that an extension is justified in this area. Accordingly, I heartily approve of your recommendation.

Very truly yours,


Leon F. Hitch

LFH:cf

~~CONFIDENTIAL~~
~~STANFORD UNIVERSITY~~
~~STANFORD, CALIFORNIA~~

October 30, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen:

Thank you very much for sending me a copy of your Tentative Recommendation relating to revision of the Evidence Code, No. 5, The Psychotherapist-Patient Privilege.

I feel that the proposed changes in the law are a constructive clarification and revision.

Very truly yours,



Malcolm McQuarrie

MM:br

SHENAS AND BERTON Attorneys at Law

Home Tower, Suite 1104
707 Broadway
San Diego, California 92101
(714) 232-6706

PETER SHENAS

ROBERT JAMES BERTON

November 1, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen:

In my capacity as an attorney I am in receipt of your letter of transmittal dated October 21, 1968 with regard to your tentative recommendation relating to the psychotherapist-patient privilege under the California Evidence Code. Please note, however, that I am a Vice-President and Director of the Jewish Family Service of San Diego, a non-sectarian, non-profit, charitable institution engaged primarily in family counselling on both the individual and group levels in the San Diego area. Therefore, your letter creates special interest insofar as I am concerned. I am writing not only on a personal basis, but also on behalf of the Jewish Family Service of San Diego.

Recent times I have been made keenly aware of the problems which arise because of the lack of protection for the confidential communications which arise between "client" and school psychologists, licensed clinical social workers and marriage, family and child counselors. It seems clear to me that "client" or "patient", if you prefer that usage, makes no distinction, and should not reasonably be expected to make a distinction when deciding whether to divulge confidential communications to a psychiatrist or licensed psychologist, to a school psychologist, licensed clinical social worker or marriage, family or child counselor. The broadened coverage of the tentative recommendation relating to the psychotherapist-patient privilege would allow the client to divulge confidential information to a licensed clinical social worker, school psychologist or marriage, family and child counselor without fear of publication.

It would seem to me that if such professional people are to serve the best interests of their clients, they require the full confidence of their clients to the same degree as would a psychiatrist or licensed psychologist.

November 1, 1968

Page 2

SHENAS AND BERTON Attorneys at Law

California Law Revision Commission:

Your tentative recommendation is not only salutary but also in my opinion, a vital and necessary concomitant between the "client-patient" and the school psychologist, licensed clinical social worker or marriage, family and child counselor.

Sincerely,

A handwritten signature in cursive script that reads "Robert James Berton". The signature is written in dark ink and is positioned above the typed name.

ROBERT JAMES BERTON

RJB:FL

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY · DAVIS · IRVINE · LOS ANGELES · RIVERSIDE · SAN DIEGO · SAN FRANCISCO



SANTA BARBARA · SANTA CRUZ

SCHOOL OF CRIMINOLOGY

BERKELEY, CALIFORNIA 94720

November 4, 1968

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I am grateful for the opportunity to present my views to the California Law Revision Commission on psychotherapist-patient privilege.

The new evidence code of California which provides a special psychotherapist-patient privilege has worked out extremely well and I think it fair to say that California now has the best law on privilege in the country today.

I do agree that the psychotherapist-patient privilege should be extended to social workers, marriage counselors, and all other relevant professional groups. I think you should pay no heed, whatsoever, to the complaint by physicians that psychotherapy should be restricted to those with a medical licensure. That day is long since past, and the medical groups which have opposed the extension of privilege to non-medical professional groups are being very short-sighted and selfish in their interest, which, in this case, is opposed to the public interest.

One specific difficulty has arisen with the new evidence code, a difficulty which was also present with the old law: when a patient files a suit for personal injury he automatically waives his privilege. This has caused real hardship. In certain instances that I know about litigants have been inhibited from filing a legitimate personal injury suit for fear of having a past psychiatric record disclosed. In another case, the plaintiff eliminated all reference to "mental pain and suffering" from a suit for physical injury in the hope of preventing an extensive psychiatric record from being publicly disclosed. The defendants still insisted on their right to access to the psychiatric record and the plaintiff was subject to the risk of public disclosure of psychiatric material which might have been very damaging.

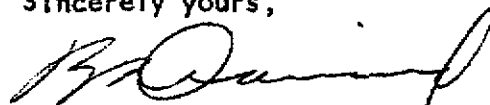
The law, as it operates today may effectively deprive a person of his right to file a personal injury suit (or a malpractice suit, and possibly a child custody action) in that fear of public disclosure of past psychiatric treatment (with psychiatric records containing derogatory information) may force him to refrain from taking legitimate legal action. This is particularly likely to be so with public figures, politicians, public office holders, etc., who can be badly hurt by disclosure of previous psychiatric treatment.

I am familiar with, and I generally agree with, the legal principle that a litigant cannot hide behind his own medical record. But something should be done to remedy the unjust situation that now exists. Perhaps there can be some way of restricting access to the record, or to limit the scope of the deposition, or to prohibit blanket subpoenas of medical records with resultant "fishing expeditions".

Furthermore, when a litigant waives his privilege by filing suit for personal injury he may have no idea whatsoever as to what he is waiving. He may believe that his psychiatric record contains only innocuous material, but it may, in actual fact, contain all sorts of derogatory comments, diagnoses, implications of sexual perversion, etc., etc., none of which the patient-litigant knows about. He is, therefore, in the unfortunate position of waiving his right to confidentiality thinking that is a harmless thing to do, yet he will end up doing much harm to himself.

I recommend that the law be changed to provide for the automatic waiver of the psychotherapist-patient privilege only when the plaintiff claimed damage for psychological injury or where the nature of the suit clearly raises relevant issues of the litigant's mental state.

Sincerely yours,



Bernard L. Diamond, M.D.,
Professor of Criminology and
of Law and Clinical Professor
of Psychiatry

BLD:es

IBLT XV
UNIVERSITY OF SOUTHERN CALIFORNIA
DEPARTMENT OF PSYCHIATRY SCHOOL OF MEDICINE
DIVISION OF SOCIAL AND COMMUNITY PSYCHIATRY

1934 HOSPITAL PLACE
LOS ANGELES, CALIFORNIA 90033

TELEPHONE: CAPITOL 5-3115
EXTENSION: 7-3261

ALEXANDER S. ROGAWSKI, M.D., Director

November 5, 1968

John H. DeMouly, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

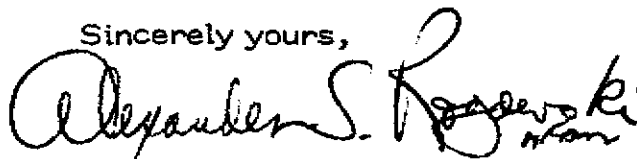
Dear Mr. DeMouly:

In reply to your Letter of Transmittal of October 21, 1968, concerning the tentative recommendation relating to the Evidence Code Number 5 --The Psychotherapist-Patient Privilege, be advised that I have carefully read the transmitted material and fully agree with the recommendations made.

I consider it essential that all those who may lawfully use therapeutic techniques be covered by the Psychotherapist-Patient Privilege, i.e., School Psychologists, Clinical Social Workers and Marriage, Family and Child Counselors, as defined by the relative legal definitions. I also heartily endorse the extension of the term "Confidential Communication" to the group therapy situation.

I appreciate your including me in your deliberations.

Sincerely yours,



Alexander S. Rogawski, M. D.

ASR:kam

1st Supp Memo 68-107
CLINICAL SOCIAL WORK

EXHIBIT XVI

BY APPOINTMENT

ROBERT L. DEAN, M. A.
2107 VAN NESS AVENUE, SUITE 403
SAN FRANCISCO, CALIFORNIA 94108
OR 3-6363

October 28, 1968

Mr. John DeMouly, Executive Secretary
Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Dear Mr. DeMouly:

I am enclosing a few case examples in clinical social work practice illustrating problems related to the lack of privileged communications. I am collecting examples very slowly and shall send others as I receive them from my colleagues. I hope they may be of use in indicating the present disadvantageous position of clinical social work practice.

I am also enclosing a copy of a letter **Exhibit XVII** I have received from the director of the Family Service Agency of Marin County as a possible document in explaining our situation.

Sincerely yours,

Robert L. Dean

Robert L. Dean, M. A.
Clinical Social Worker

Case Examples in Clinical Social Work Practice Illustrating Problems Related To

The Lack of Privileged Communications

In Family Service Agencies

A woman came to the agency because of difficulties in her marriage. She had a number of psychological problems of her own and decided to continue in treatment even though her husband was unwilling to participate. When divorce eventuated, the wife's attorney wished to subpoena the social worker because he thought the testimony would be to his client's advantage. While the social worker could have testified that the woman was working her problems out in treatment, a description of the nature of the problems would have been detrimental to the client. Such testimony also probably would have jeopardized the treatment relationship and further progress in the case. The attorney was persuaded not to subpoena the social worker.

#####

A psychotic woman who had been diagnosed as "paranoid schizophrenic" and who was functioning in a precarious manner following several hospitalizations, came to the agency seeking help with the most disturbed of her eight children. She was helped to find treatment for her disturbed son and to come to terms with her inability to handle her three teen-agers, agreeing to have them go to their father. The former husband was also seen as part of the study. In the process he became more realistic about his former wife's mental illness which he had not accepted before, and he also recognized her inability to care for the children. When he filed for custody of all the children, the social worker was subpoenaed to testify. It was finally agreed that the situation would be studied and handled by the probation department so that testifying was not necessary. It would have been very detrimental to the social worker's relationship with the mother had she been forced to testify.

#####

In Psychiatric Clinics

A 25-year-old woman applied to the psychiatric clinic for treatment with the presenting complaint that she frequently behaved in self-defeating ways. She also was in the process of getting a divorce and in the early phase of treatment divorce proceedings were underway. It was not until those proceedings had been completed which took some time, that the patient was able to reveal some important information which she had consciously withheld. She reported withholding this since it was her correct understanding that her social worker therapist did not possess privileged communication. The data she withheld had tremendously important bearing on the dynamics of her situation and the course of her treatment.

#####

A mother sought help from a clinical social worker when she discovered that her two teen-age daughters were involved in using marijuana. She was very concerned about the confidentiality in any treatment situation she might engage in because she had separated from her husband and was planning to file for divorce. She feared that her husband might use some of the information she

The Lack of Privileged Communications

wished to divulge in seeking custody of the two children. Although the woman wished to work with the social worker, she was informed of the lack of privileged communications and was referred to a psychiatrist for the service for which she would be forced to pay a higher fee than she could afford.

#####

A prominent business executive in the community came to the clinic to discuss his distress over the turn of events in his homosexual relationship with a clinic patient who was threatening to expose him in the community. He came to the clinic after regular hours and was seen by the social worker who was the professional person on call on that date. The matter of privileged communications immediately became an issue in this potentially explosive situation.

#####

In a divorced family, a mother and son were in treatment in the clinic. When the mother requested a study of her youngest daughter, the father was contacted and responded by threatening court action to gain full custody of both children. Through his attorney he indicated a plan to subpoena the clinic records. The case required exceptionally careful recording since the father's stated aim was to prove the mother unfit. Eventually, the staff was able to meet with the parents' respective attorneys to interpret the very substantial difficulties for everyone of working under the threat that the records might be misused.

#####

Parents and son were both in treatment at the clinic. The father sued for divorce upon learning of the wife's homosexual relationship with a neighbor. The father's attorney threatened to subpoena the records including the social worker's intake notes with the ostensible purpose of finding "evidence" of the mother's misconduct.

#####

In divorced parents, the father had custody of the children when the mother was hospitalized in a psychiatric hospital. Following discharge from the hospital, the mother gained custody of the children and sought clinic help for one of them. The father threatened to reopen the custody question and to subpoena the social worker's intake notes. Because the case was in process of referral to another agency, the exchange of information had to be handled with extreme care.

#####

In Private Practice

During treatment of a teen-age girl and her parents, custody of the child was reopened. The father requested that the social worker testify that the child's welfare would be better served if she were in his custody. The father and his attorney finally accented the social worker's unwillingness to testify on the basis that both the mother's confidence would be violated and the child would be adversely affected by her therapist appearing in court with information that could be construed negatively against either parent.

#####

**family
service
agency**

OF MARIN COUNTY

SUITE 307 • 1005 A STREET • SAN RAFAEL, CALIF. 94901 • PHONE 456-3853

NICHOLAS M. SUNTZEFF, M.S.W.
Executive Director

OCTOBER 17, 1968

MR. ROBERT DEAN, A.C.S.W.
UNIVERSITY OF CALIFORNIA MEDICAL CENTER
ADULT PSYCHIATRIC CLINIC, ROOM 201
SAN FRANCISCO, CALIFORNIA

RE: PRIVILEGED COMMUNICATION FOR
CLINICAL SOCIAL WORKERS

DEAR BOB:

THE FAMILY SERVICE AGENCY OF MARIN COUNTY IS HIGHLY CONCERNED ABOUT THE FACT THAT SOCIAL WORKERS OFFERING NON-MEDICAL PSYCHOTHERAPY TO HELP PEOPLE UNDERGOING STRESS TO ACHIEVE BETTER FUNCTIONING DO NOT HAVE PRIVILEGED COMMUNICATION. BECAUSE THERE IS ALWAYS THE POSSIBILITY OF A SUBPOENA THE CASE RECORDS WE KEEP ARE EXTREMELY LIMITED. WE ARE FORCED NOT TO RECORD MUCH OF THE ESSENTIAL INFORMATION NEEDED AS REFERENCE TO HELP THE FAMILIES AND INDIVIDUALS WE SEE. GENERALLY SPEAKING WE LEAVE OUT ANY MATERIAL DEALING WITH SUCH THINGS AS SEXUAL PROBLEMS, POLITICAL ACTIVITY, PAST OR PRESENT BEHAVIOR THAT MIGHT BE USED AGAINST AN INDIVIDUAL.

SINCE WE ARE A UNITED CRUSADE AGENCY WE SEE A FULL CROSS-SECTION OF THE POPULATION OF MARIN COUNTY -- PEOPLE FROM ALL AREAS AND ALL SOCIO-ECONOMIC LEVELS. WE SEE AFFLUENT, WELL-KNOWN FAMILIES AS WELL AS THOSE WHO ARE POOR. WHETHER RICH OR POOR, THE PUBLIC THAT IS IN NEED OF PSYCHOTHERAPEUTIC HELP SHOULD HAVE THE PROTECTION OF PRIVILEGED COMMUNICATION WHEN THEY SEEK SUCH HELP.

IN OUR AGENCY THERE ARE SOME CASES THAT WE NEVER "OPEN" -- THAT IS, IDENTIFY IN ANY WAY BY NAMED CASE RECORD. EVEN NOTES ARE NOT KEPT BY THE PSYCHIATRIC SOCIAL WORKER. HAVING SKIMPY RECORDS OR NONE AT ALL NATURALLY ADDS UP TO A WEAKENING OF THE EFFECTIVENESS IN OUR WORK WITH TROUBLED FAMILIES.

A GOOD, TYPICAL EXAMPLE OF THE PROBLEM OF OUR NOT HAVING PRIVILEGED COMMUNICATION IS IN OUR SEEING A COUPLE WHO ARE CONSIDERING DIVORCE. OFTEN THEY ARE REFERRED FOR HELP IN TRYING TO WORK OUT THE MARRIAGE. YET WITH A POSSIBILITY OF A DIVORCE ACTION OCCURRING, WE LEAVE OUT VERY IMPORTANT ITEMS FROM THE CASE RECORD ON THE CHANCE THAT THE RECORD MIGHT BE SUBPOENAED. WE LEAVE OUT SUCH THINGS AS ANY MENTION OF AFFAIRS, PAST TRANSIENT HOMOSEXUAL BEHAVIOR, ETC. WE EVEN HAVE TO

MR. ROBERT DEAN (CONTINUED)

BE CAREFUL IN WHAT WE RECORD IN THE WAY OF EACH INDIVIDUAL'S PSYCHO-SOCIAL DIAGNOSIS. WHEN A COUPLE SEEKS HELP, THEY, INDIVIDUALLY HAVE TO FEEL CONFIDENT AND FREE TO BRING OUT AND DISCUSS VERY INTIMATE AND PERSONAL MATERIAL.

WE CANNOT SEE THE LOGIC OF HAVING PRIVILEGED COMMUNICATION GIVEN TO ATTORNEYS AND PSYCHOLOGISTS, BUT NOT TO CLINICAL SOCIAL WORKERS. AS A MATTER OF PROTECTION TO THE PUBLIC AND TO BE EFFECTIVE IN THEIR WORK, ATTORNEYS AND PSYCHOLOGISTS HAVE SUCH PRIVILEGE. WE NEED THIS, TOO.

SINCE 1956 OUR AGENCY HAS BEEN SUBPOENAED FIVE TIMES -- THREE TIMES FOR OUR CASE RECORDS AND TWICE FOR PERSONAL APPEARANCE OF A STAFF MEMBER IN SEPARATE INSTANCES. IN FOUR, THE CASES INVOLVED PERSONAL INJURY TO A FORMER CLIENT. THE DEFENSE ATTORNEYS DESIRED INFORMATION TO PROVE THE FORMER CLIENTS AS BEING HABITUALLY NEGLIGENT OR ACCIDENT PRONE. A TYPICAL CASE WAS ONE WHERE THE FORMER CLIENT WAS INJURED BY HIS AUTOMOBILE WHEN THE BRAKES IN THE PARKED CAR GAVE AND THE CAR ROLLED INTO HIM. ALL OF THE ACCIDENTS OCCURRED SOMETIME AFTER THE CLIENT TERMINATED WITH US. I DOUBT WHETHER ANY OF OUR SUBPOENAED RECORDS WERE OF VALUE.

THE FIFTH INSTANCE WAS WHEN ONE OF OUR COUNSELORS WAS SUBPOENAED TO APPEAR IN COURT TO TESTIFY IN A MURDER TRIAL. A MAN KILLED HIS WIFE. THE MAN WAS SEEN ONLY ONCE FOR A BRIEF, BEGINNING EXPLORATORY INTERVIEW. HE DID NOT KEEP THE SUBSEQUENT INTERVIEW THAT WAS SCHEDULED. IT WAS SHORTLY AFTER THAT THAT THE MURDER OCCURRED. THE JUDGE QUESTIONED THE APPEARANCE OF OUR SOCIAL WORKER AS TO WHETHER HE WAS IN COURT AS AN "EXPERT" OR AS A WITNESS. TESTIMONY EVENTUALLY CONCLUDED THAT THE MAN HAD ONE APPOINTMENT AT OUR AGENCY, THAT HE SHOWED SOME ANGER, BUT THAT OUR FAMILY COUNSELOR COULD NOT DIAGNOSE THE MAN AS "PARANOID."

I DO NOT KNOW OF ANY INSTANCE WHERE AN AGENCY OR A SOCIAL WORKER WAS SUBPOENAED IN A DIVORCE CASE OR OTHER COURT ACTION. NOT HAVING PRIVILEGED COMMUNICATION THERE IS ALWAYS THAT POSSIBILITY. IT IS MY UNDERSTANDING THAT IF THIS EVER OCCURS THE TESTIMONY GIVEN PROBABLY WOULD BE RULED OUT AS "HERESAY." FROM OUR POINT OF VIEW, TESTIMONY WOULD PROBABLY BE DAMAGING TO BOTH SIDES. IT WOULD FURTHER PRECLUDE THE PEOPLE INVOLVED IN SEEKING HELP AGAIN. IT MAY PREVENT OTHERS NEEDING HELP IN APPLYING.

IT IS GENERALLY NOT KNOWN THAT WE LACK PRIVILEGED COMMUNICATION. I DO NOT KNOW HOW MANY PEOPLE RESIST SEEKING HELP IF THEY DO HAVE SUCH KNOWLEDGE. ONLY ONCE, SOME TIME AGO AT A SOCIAL GATHERING, A WOMAN TOLD ME THAT SHE WOULD LIKE TO SEEK HELP YET KNEW THAT LEGALLY THINGS SHE MIGHT BRING OUT WOULD NOT BE STRICTLY CONFIDENTIAL.

WE KNOW THAT MILITARY FAMILIES OFTEN SEEK HELP OUTSIDE THE MILITARY, FEARING THAT THEIR SEEKING HELP MIGHT BECOME KNOWN. THIS, WE BELIEVE, IS ANOTHER INDICATOR FOR THE NEED OF PRIVILEGED COMMUNICATION.

WE BELIEVE THAT PRIVILEGED COMMUNICATION SHOULD BE GIVEN TO CLINICAL SOCIAL WORKERS OR THE SOCIAL WORKERS IN AGENCIES LIKE A FAMILY SERVICE AGENCY. WE DO NOT SEE THE NEED FOR PRIVILEGED COMMUNICATION TO SOCIAL WORKERS WHO ARE OTHER THAN THOSE DEFINED AS "CLINICAL SOCIAL WORKERS." PUBLIC AGENCIES SUCH AS PROBATION DEPARTMENTS OR WELFARE DEPARTMENTS THAT HAVE TO MAKE REPORTS AS A MATTER OF THEIR WORK, NATURALLY SHOULD NOT BE COVERED. ALSO SOCIAL WORKERS WHO ARE SOLELY

MR. ROBERT DEAN (CONTINUED)

WORKING AS FACULTY MEMBERS, COMMUNITY ORGANIZATION SPECIALISTS, AND RESEARCH PRACTITIONERS MAY BE EXCLUDED.

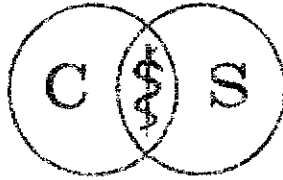
CORDIALLY,

Nick

NICHOLAS M. SUNTZEFF, ACSW
EXECUTIVE DIRECTOR

NS/ORH

CC: SENATOR JOHN MCCARTHY
ASSEMBLYMAN WILLIAM BAGLEY



CEDARS-SINAI MEDICAL CENTER

Reply to:
8720 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048

Telephone: 652-5000
Area Code 213

October 28, 1968

John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

I have received the Commission's tentative recommendation relating to the Evidence Code, Number 5 - The Psychotherapist - Patient Privilege. I think that the recommendations are excellent and extremely important. I have encountered a number of situations in which the absence of privilege has interfered with psychotherapy and cite these example illustrations:

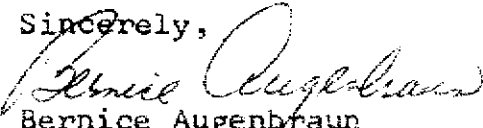
a divorced mother of a small child in psychotherapy with me who has withheld material important for diagnosing and treating the child for fear of its being divulged in court in a custody suit brought by the father;

an adolescent patient who withheld highly significant material relating to experiences with her parents because of the possibility of the therapist having to testify in a custody trial;

marital partners contemplating divorce who refused psychotherapeutic help because of apprehension about intimate material being divulged in court in a divorce hearing.

The protection of privileged communication between patient and psychotherapist is essential to facilitate a help-giving process. It is only rational to extend the privilege to all those actually practicing psychotherapy.

Sincerely,


Bernice Augenbraun
Licensed Clinical Social Worker
Chief Psychiatric Social Worker
Department of Child Psychiatry

BA:pl

UNIVERSITY OF SOUTHERN CALIFORNIA
SCHOOL OF SOCIAL WORK
UNIVERSITY PARK
LOS ANGELES, CALIFORNIA 90007

October 29, 1968

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

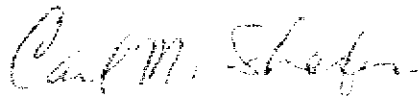
Dear Mr. DeMouilly:

I am writing to advise the California Law Revision Commission of my endorsement of its tentative recommendation for revision of the Evidence Code relating to psychotherapist-patient privilege.

As a psychotherapist, I have been called to testify and compelled to reveal information that ~~is~~ proved to be psychologically damaging to my client and of no material importance to the cause of justice. This has resulted in my having to advise clients subsequently that I could not insure confidentially in their relationship with me. As the Commission's tentative recommendation suggests, such inhibition of therapist-patient communication substantially limits the therapeutic process.

I urge that the Commission submit its recommendation for early legislative consideration and offer my cooperation in this study in what ever manner seems appropriate.

Sincerely,


Carl M. Shafer, DSW
Assistant Professor

CMS:ek

1st Supp. Memo 68-107 EXHIBIT XX

SYLVIA FOWLER, M.S.W., A.C.S.W.
1245 GLENDON AVENUE
LOS ANGELES, CALIFORNIA 90024
TELEPHONE 474-7072

Oct. 28, 1968

California Law Revision Commission
School of Law
Stanford, California 94305

Re: The Evidence Code
#5 The Psychotherapist-Patient
Privilege
(As revised Oct. 21, 1968)

Dear Sirs:

As a Clinical Social Worker, I am most favorably impressed by the long needed changes proposed by the California Law Commission which would include Clinical Social Workers and other qualified psychotherapists in the matter of privileged communication.

In my practice throughout the years, both in agencies and in private work, I have encountered many instances where patients have been too fearful to divulge highly pertinent information because I could not guarantee confidentiality legally. This, of course, has made for serious handicaps in psychotherapeutic work.

It has been a common problem frequently discussed by my colleagues. Your passage of the revisions will be a giant step forward in our work with very troubled people.

Sincerely yours,

Sylvia Fowler

Sylvia Fowler

VALLEY MENTAL HEALTH CENTER

12735 VENTURA BOULEVARD

STUDIO CITY, CALIFORNIA

TELEPHONE
769-5924

November 2, 1968

California Law Revision Commission
School of Law
Stanford, California 94305

Gentlemen:

Regarding your tentative recommendations relating to the psychotherapist-patient privilege provisions of the Evidence Code, I strongly support these as proposed.

From my own experience and that of my colleagues, patients who are reluctant to disclose embarrassing or potentially damaging information cannot be given reassurances of legal protection if they have chosen to seek help from psychotherapists excluded from privilege in the existing law. This is both capricious and contrary to public policy. In addition, excluded psychotherapists are put in an untenable position in a court of law where they must either violate their ethics and responsibilities to their patients, or be in contempt of court.

With regard to group psychotherapy, this technique promises to be one of our most effective modalities. Anything which discourages the use of such valuable therapeutic tools must be contrary to the interests of society.

I repeat that for the above reasons I emphatically endorse the Commission's proposals for modification of the Evidence Code regarding psychotherapist-patient privilege as stated in your communication of October 21, 1968.

Yours truly,

Marvin N. Kaphan

Marvin N. Kaphan, MSW, ACSW
Marriage, Family and Child
Counselor Lic. #717
Clinical Social Worker Lic. #181

Family Service Center...

J. DONALD CAMERON, ACSW
EXECUTIVE DIRECTOR

442 NO. FULTON - FRESNO, CALIFORNIA 93701

Phone 485-2751

November 4, 1968

California Law Revision Commission
School of Law
Stanford, California 94305

Gentlemen:

I fully support the proposed revisions to extend privilege communication to marriage counselors and clinical social workers.

It is unfair that those whose incomes prohibit their going to a private psychologist or psychiatrist are deprived of this. The same benefits should be extended to those who receive marriage and family counseling in Family Service agencies which is done by licensed marriage counselors and clinical social workers.

Very truly yours,



E. G. "Jack" Crews
President
Board of Directors

EGC:ch

**Family
Service
Association**OF PALO ALTO
AND LOS ALTOS

375 CAMBRIDGE AVENUE • PALO ALTO, CALIFORNIA 94306 • TELEPHONE 326-6576

GERTRUDE M. HENGERER, Ph.D.

Executive Director

November 4, 1968

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly,

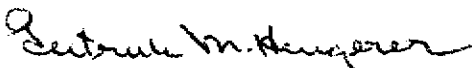
I am in whole-hearted support of your tentative recommendation relating to psychotherapist-patient privilege in the Evidence Code. I was an ardent supporter to secure passage of the Senate bill to license Clinical Social Workers and needless to say was distressed when we were not able to get privileged communication last year.

In addition to my Executive responsibility here at Family Service, I am also chairman of the Western Regional Committee of National Family Service Association of America. This is an organization of some 40 accredited family agencies in the Western Region of which 30 are in California. I know that executives of these family agencies and their staffs would also join me in urging that this bill be placed before the Legislature and supported for passage.

I would like very much to be kept informed as to the final action the Commission takes on your tentative recommendation. I would also appreciate any help you might give me should the bill appear before the Legislature as to what steps we might take to support its adoption by the Legislature.

Thank you very much.

Sincerely,



Gertrude M. Hengerer, Ph.D.
Executive Director

GMH:mb



San Diego State College
San Diego, California 92115

School of Social Work

November 4, 1968

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I have now had the opportunity to review the "Tentative Recommendations relating to The Evidence Code, No. 5, The Psychotherapist-Patient Privilege," revised October 21, 1968, and transmitted by your letter dated October 21, 1968.

The proposed changes being recommended by the California Law Revision Commission to protect by law the confidential communications of licensed school psychologists, clinical social workers, and marriage, family and child counselors within the scope of the psychotherapist-patient privileges seems so eminently sensible that I trust it will be recommended to and enacted by the California Legislature. Such legislation would remove a serious handicap for these practitioners. I know from personal knowledge the difficulties which the lack of protection your Commission now proposes to offer, has posed for clinical social workers and I am gratified that the difficulty is in process of being eliminated.

Is it possible that school social workers (sometimes known here in California as visiting teachers) could also be covered in your recommendations? They are subject to educational and other requirements under the Educational Code and their position in relation to their practice in the school system is not unlike certain of those practitioners you propose to accord privileged communication by law.

I was gratified to see these recommendations and generally pleased with their context.

Since there are related areas of concern, I trust your Commission will undertake to examine other areas where existing legislation may be considered for revision.

Sincerely yours,



Ernest F. Witte
Dean

EFW:js

Family Service Center...

I. DONALD CAMERON, ACSW
EXECUTIVE DIRECTOR

442 NO. FULTON - FRESNO, CALIFORNIA 93701

Phone 485-2751

October 30, 1968

California Law Revision Commission
School of Law
Stanford, California 94305

Dear Sirs:

Thank you for the opportunity to express my opinion, and the opinion of my staff on the proposed legal revision effecting psychotherapist-patient privilege.

Our staff has among its members people licensed as marriage, family and child counselors and people in the process of becoming licensed clinical social workers. We all believe that the proposed revisions of October 21, 1968 are not only appropriate but imperative.

Not being subject to privilege communication frequently makes people hesitant to reveal pertinent information to our counselors and adversely effects the results of counseling.

We give our fullest endorsement to the proposed changes and with this goes our hope that the change can be effected as soon as possible.

Very truly yours.



J. Donald Cameron, ACSW
Executive Director

JDC:ch

Family Service Center...

J. DONALD CAMERON, ACSW
EXECUTIVE DIRECTOR

442 NO. FULTON - FRESNO, CALIFORNIA 93701

Phone 485-2751

October 30, 1968

California Law Revision Commission
School of Law
Stanford, California 94305

Dear Sirs:


Thank you for the opportunity to express my opinion, and the opinion of my staff on the proposed legal revision effecting psychotherapist-patient privilege.

Our staff has among its members people licensed as marriage, family and child counselors and people in the process of becoming licensed clinical social workers. We all believe that the proposed revisions of October 21, 1968 are not only appropriate but imperative.

Not being subject to privilege communication frequently makes people hesitant to reveal pertinent information to our counselors and adversely effects the results of counseling.

We give our fullest endorsement to the proposed changes and with this goes our hope that the change can be effected as soon as possible.

Very truly yours,


J. Donald Cameron, ACSW
Executive Director

JDC:ch

THE VALLEY PSYCHIATRIC MEDICAL CLINIC

1515 THE ALAMEDA, SUITE 2-A

SAN JOSE, CALIFORNIA

295-7761

STAFF

MURRAY BOWER, M.D.
GORDON R. COHEN, M.D.
KONRAD FISCHER, M.S.W.
ELIZABETH R. FREEDMAN, M.S.W.
CARL PETERS, M.D.
ALLAN L. SCID, M.A., M.D.
PHILIP M. STEIN, M.D.
JOHN WAX, M.A.

October 24, 1968

To whom it may concern:

When in private practice, there were a number of occasions when the nature of the presenting problem included potential (litigations) material--divorce, child custody, partnership, etc.--in which the possible communication to me, not being covered by the privilege communication statute, would place the client in jeopardy. Knowing this would make the patient withhold information needed for the therapeutic process as well as avert the relationship needed to do this work. I felt ethically compelled to inform the client. The client then chose to seek services with a physician where this would not be a problem. The obvious mischief of this kind of situation and its many ramifications, I think, are obvious.

Further in the employ of a private non-proprietary psychiatric clinic and in a proprietary psychiatric clinic, three occasions occurred where attorneys, two in divorce proceedings and custody disputes, have attempted to manipulate and threaten (please see letter from me to local Santa Clara County Bar Association if confirmatory evidence is required).

There is a common assumption that other disciplines functioning in a medical setting are covered under a physicians privilege--this, to my knowledge, has never been tested in my court action. I believe that nurses have been required to testify and are not so covered under a "blanket privilege" and would not personally find such an assumption sufficient to operate on as it would leave me and my clients vulnerable in a way which I feel is unprofessional and ill advised.

I hope this information is of use to you in correcting a longstanding inequity in the statutes as they now exist. It has the potential and in fact does much mischief to both the practicing clinical social worker and the people that they serve.

Sincerely,

Konrad Fischer

Konrad Fischer, LCSW
Licensed Clinical Social Worker
Chief Psychiatric Social Worker

ROBERT E. LYNN, M. S. S. W.
233 CAJON STREET
REDLANDS, CALIF. 92373
PHONE 783-2278

October 30, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, Calif. 94305

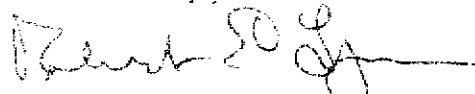
Dear Sirs:

As a licensed clinical social worker I was most pleased to learn that your agency was aware of our problem regarding psychotherapist-patient privilege. I have been in full time private practice for the past ten years. My two associates are psychiatrists. Although I hold a state license as a marriage, family, and child counselor, as well, the vast majority of my practice is individual and group psychotherapy.

It's been a constant concern to me to be aware that my professional ethics are grounded on the confidentiality of the patient's disclosures, and that the patient trusts me with such information, while I do not have legal backing in privileged communication. As a consequence I long ago decided that if the situation was ever put to a test, I would accept contempt of court and possible jail sentence sooner than sell out my professional values. I feel that the restriction of such privilege only to physicians and psychologists is unfair, discriminatory, and most of all not valid.

The content of your recommendation is very thorough and thoughtful. If you have a need for any specific information regarding licensed clinical social workers, please don't hesitate to let me know.

Sincerely,



Robert E. Lynn, M.S.S.W.

REL/ta

1095 Pavilion Drive
Pomona, California 91766

November 6, 1968

California Law Revision Commission
School of Law
Stanford, California 94305


Attention: Mr. John H. DeMouilly

Dear Mr. DeMouilly:

I carefully read the tentative recommendation relating to the Evidence Code #5, the psychotherapist-patient privilege. Admittedly, my legal background is limited. I cannot intelligently comment on the legal design of your recommendations. I can, however, enthusiastically support the intent of your recommendations, i.e., to regard as privileged information the confidential communication between the social worker and the client.

It has come to my attention recently that a nurse employed in a Short Doyle Clinic has been subpoenaed to appear in Court. I understand that she will have to reveal confidential information which she received as the employee of the Clinic. I am wondering if there should be a blanket inclusion of employees in mental health clinics.

Sincerely,



(Mrs) Hannah F. Flack

HFF:al



1st Supp. Memo 68-107 EXHIBIT XXIX

**NATIONAL
ASSOCIATION
OF
SOCIAL
WORKERS
INC.**

LOS ANGELES AREA CHAPTER 601 No. Vermont Ave., Suite 201 • Los Angeles, Calif. 90004 • 663-3245

November 4, 1968

Mr. John H. DeMouilly,
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

I have reviewed with great interest the tentative recommendations related to the psychotherapist-patient privilege under the Evidence Code extending confidential communication to licensed clinical social workers and marriage, family and child counselors as well as school psychologists.

Our professional association considers the inclusion of social work practitioners in the group of psychotherapists to whom privileged communications can be made as an extremely valuable and socially desirable extension of the law. Social workers frequently work with persons in marital conflict, with adolescents in conflict with their parents and with situations of conflict among parents and children. Successful therapy does require sharing of intimate details of intra-familial life as well as complete honesty about personal factors. Without assurances that such material can be held in strict confidence, those seeking help may be unwilling to talk freely and therefore the social worker is hampered in using his skills to offer help.

We strongly support your tentative recommendation as an urgently needed reform in the California law.

Sincerely,

(Mrs.) Katherine S. Lester, Certified Clinical Social Worker
Chairman, Division of Professional Standards
National Association of Social Workers,
Los Angeles Area Chapter

KSL:mh



CATHOLIC SOCIAL SERVICE of the Diocese of Oakland, California

————— *Serving Alameda and Contra Costa Counties* —————

November 5, 1968

Mr. John H. De Moully, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California

Dear Mr. De Moully:

As a family service agency providing counseling to families and individuals in the East Bay, we wish to address ourselves to the forthcoming recommendations of the Commission concerning the psychotherapist-patient privilege, under the Evidence Code. We support your recommendation of extension of privileged communication to the school psychologist, the clinical social worker, and to the marriage, family and child counselor. The guarantee of confidentiality will enable the client to utilize more effectively the psychotherapeutic relationship.

At the same time, we wish to point out that voluntary family service agencies such as Catholic Social Service are offering many of the same services to clients, utilizing the skills of trained social workers with MSWs, and the same psychotherapeutic processes. The clientele of these agencies stand to benefit to the same degree from the protection of their confidences - as has been recognized in the Conciliation Court Law. We strongly urge that you incorporate this same privilege for accredited family service agencies operating as non-profit corporations under the laws of the State of California.

We would welcome your comments.

Sincerely,

Rev. William V. Macchi, MSW
Executive Director

WVM:tg

An Agency of Catholic Charities / Participating in United Bay Area Crusade

Please address reply to:

 3767 D...
Fremont, 94536
792-2444

 27171 Colaroga Ave.
Hayward, 94545
783-2747

 433 Jefferson St.
Oakland, 94607
634-5656

 1300 Selori St.
Pittsburg, 94565
432-7969

 335 St. Mary St.
Pleasanton, 94566
846-3266

 3213 North Main St.
Pleasant Hill, 94523
935-6220

 225 Civic Cen
Richmond, 94
282-1277

GREATER BAY AREA COUNCIL OF FAMILY SOCIAL AGENCIES
433 JEFFERSON STREET, OAKLAND, CALIFORNIA-94607

November 4, 1968

Mr. John H. De Moully, Executive Secretary
California Law Revision Commission
School of Law-Stanford University
Stanford, California

Dear Mr. De Moully:

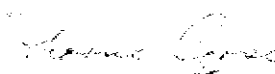
Mr. Stanley Bass, Executive Director of the Jewish Family Service of Alameda and Contra Costa Counties, has called to our attention your tentative recommendation relating to the psychotherapist-patient privilege. As an organization representing a group of family service agencies serving the Bay Area and financed by the United Bay Area Crusade (list attached), we are vitally concerned with this problem and would wish to convey our suggestions.

We endorse the extension of privileged communication to those professions which you have outlined in your material. We believe that it is in the interest of better service to the individuals and the families obtaining psychosocial and psychotherapeutic services from those sources.

At the same time, we are seriously concerned that the recommendation omits any reference to voluntary family service agencies. We are also providing many of the same services as outlined for the above professions and utilizing the same processes and methods. Our staffs consist of trained counsellors with the Master's degree in Social Work or allied counseling sequences. Our clientele can best be served if they enjoy the same privileged communication and can thus share freely with our treatment staff those intimate facets of their life which will enhance the treatment process.

We respectfully request that you include in your final recommendation the extension of privileged communication to accredited family service agencies. We would appreciate your observations in this regard.

Sincerely,


C. Thorne Corse,
President

CTC:tg
Enc.

help for troubled families

Troubled families find help at one of the agencies of the Greater Bay Area Council of Family Service Agencies.

Agencies provide help with marital difficulties, parent-child problems, individual personality adjustment problems of children, adjustment to retiring, and aging and vocational difficulties. Agencies provide resources for community needs and communities work in cooperation with agencies to resolve social problems.

The Council is a non-profit organization which provides a medium for furthering the

aims and methods of Family Service. It provides for the dissemination to the general public, to specific groups and to member agencies, knowledge and information concerning Family Services' programs.

The Council sponsors Plays for Living, Inc., a non-profit organization which presents plays in order to acquaint audiences with the services available at the Family Service agencies.

The Council is comprised of 2 delegates (the executive director and a board representative) from each of 14 agencies.

greater bay area council of family service agencies

Member agencies of the Council are:

Family Service Agency of Alameda
2226 Santa Clara Avenue
Alameda, California 94501
Phone: 521-4151

Family Service Agency of Central Alameda County
576 Callan Avenue
San Leandro, California 94577
Phone: 483-6715

Jewish Family Services of Alameda &
Contra Costa Counties
3425 Sheffield Avenue
Oakland, California 94602
Phone: 532-6314

Family Service of Berkeley
2015 - 6th Street
Berkeley, California 94710
Phone: 845-1929

Family Service Agency of Marin County
1005 A Street
San Rafael, California 94901
Phone: 456-3853

Family Service of the North Bay
401 Amador Street
Vallejo, California 94590
Phone: 644-8938

Family Service Bureau, Oakland
445 - 30th Street
Oakland, California 94609
Phone: 834-5433

Catholic Social Service of the Diocese of Oakland
433 Jefferson Street
Oakland, California 94607
Phone: 834-5656

Family Service Association of Palo Alto & Los Altos
375 Cambridge Avenue
Palo Alto, California 94306
Phone: 792-5141

Family Service Agency of San Francisco
1010 Gough Street
San Francisco, California 94109
Phone: 474-7310

Catholic Social Service of the
Archdiocese of San Francisco
1825 Mission Street
San Francisco, California 94103
Phone: 863-3200

Jewish Family Service Agency,
San Francisco & Peninsula
1600 Scott Street
San Francisco, California 94115
Phone: 567-8860

Family Service Agency of Santa Clara County
55 E. Empire Street
San Jose, California 95112
Phone: 295-7664

Family Service Agency of San Mateo County
1870 El Camino Real
Burlingame, California 94010
Phone: 692-0555

The main offices of the agencies are listed. Branch office locations may be obtained from the main offices.



JEWISH FAMILY SERVICE of Alameda and Contra Costa Counties

3245 Sheffield Avenue, Oakland, California 94602 • Telephone 532-6314

Stanley Bass, *Executive Director*



OFFICERS

Mrs. Albert Keilson
Chairman

Mr. Irving Grutman
Vice-Chairman

Mrs. George Bataria
Secretary

October 31, 1968

Mr. John H. De Noully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

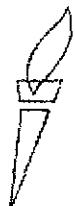
Dear Sir:

I wish to express my appreciation for the opportunity to comment on the tentative recommendation relating to the psychotherapist-patient privilege under the Evidence Code as per your letter of transmittal of October 21, 1968.

As one who has been professionally associated with voluntary accredited family service agencies for more than two decades administratively and as a practitioner using psychosocial and psychotherapeutic methods and measures, I support the extension of the psychotherapist-patient privilege to the school psychologist, the clinical social worker and the marriage, family and child counselor.

My concern, however, is that the recommended extension omits the accredited voluntary family service agency which provides psychosocial and psychotherapeutic treatment to a substantial number in the population, many of whom are referred by public school guidance departments, the medical and legal professions, the clergy, county probation departments and other community health and welfare services. The above omission means that the large number of families and individuals for whom the treatment relationship is established within the family service agency setting will continue to be deprived of the protection of privileged communication.

California legislation which enacted the licensing of clinical social workers and marriage, family and child counselors exempts the professionally trained staff of the family service agency. This exemption is granted because it is recognized that the accredited voluntary family service functions as a legal entity under state



Mr. John H. De Moully
October 31, 1966 - Page 2

regulations governing non-profit corporations, responsible to the community for its operations and services. The exemption does not question the academic training or professional qualifications of the staff through which psychosocial and psychotherapeutic treatment is provided nor does it question that such treatment is given. The rationale expressed in the tentative recommendation for extension of the psychotherapist-patient privilege to the above groups most aptly states the case for extending the privilege to the accredited voluntary family service agency.

I briefly refer to the Jewish Family Service of Alameda and Contra Costa Counties only as a case in point. All the members of its professional staff possess a master's degree in social work from an accredited school of social work and meet the minimum qualifications for the license of either clinical social worker or marriage, family and child counselor. A study of the agency conducted by the Family Service Association of America stated:

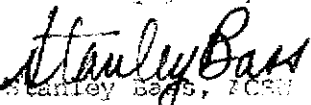
"Case records revealed a well qualified staff with differential abilities but all of whom are able to work reliably with a great degree of social pathology. Although the agency provides for a number of staff development opportunities through consultation, conferences and seminars, the staff itself is sufficiently well experienced to take some responsibility for its own professional growth."

"A number of case records review revealed a high degree of pathology yet with the agency seeming to represent the most suitable source of help. Diagnostic and treatment skills of staff have been equal to the demand for help."

The matter of privileged communication for the family service agency and its clients has been of utmost concern for many years. The tentative recommendation pertaining to the school psychologist concerns a professional with specific training and qualifications functioning within a specific setting. I refer, also, to the statement and footnote 3 on page six of the tentative recommendation about the privacy and confidentiality of communications in the Conciliation Court Law. I strongly urge that a similar approach be used to recommend that privileged communication be extended to the accredited voluntary family service agency.

I want to express my gratitude for having been given the opportunity to react to the tentative recommendations of the Law Revision Commission. I do hope I will receive a response from you concerning my comments.

Sincerely yours,


Stanley Bass, FCSR
Executive Director

SB:ac



FAMILY SERVICE AGENCY

OF CENTRAL ALAMEDA COUNTY

575 CALLAN AVE., SAN LEANDRO, CALIF. 94577

483-6715

JOHN EREMKO
EXECUTIVE DIRECTOR

October 31, 1968

Mr. John H. De Moully, Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. De Moully:

It has come to my attention through colleagues in the Family Service field that legislation is currently being developed to amend the Evidence Code. I understand that the legislation if passed will extend privileged communication to licensed clinical social workers, school psychologists and Family, Marriage and Child counselors as it pertains to the psycho-therapist - patient relationship.

I believe this legislation will fall far short of its objectives if it does not also cover social work practitioners in Family Service Agencies. The absence of the protection to the client in his relationship to a Family Service Agency has long been a serious lack in our various communities. I feel that it is of paramount importance that the proposed legislation be expanded to include privileged communication to Family Service Agencies and their clients.

Sincerely,

John Eranko, ACSW
Executive Director

JE/jl

MRS. ROSE BLUM, M. S. W.

3695 FREDONIA DRIVE

LOS ANGELES, CALIFORNIA 90028

TELEPHONE 462-1359

October 31, 1968

Dear Mr. De Moulley:

In answer to your letter regarding revisions of the law covering psychotherapy - patient privilege. The revisions proposed, namely, the inclusion of School psychologists, licensed clinical social workers, and marriage, family, and child counselors seem fine to me; important protection for the client who deals with these people. I have two more comments. What about the social worker who works in an agency, not licensed, doing essentially the same work as a licensed clinical social worker? Is the confidentiality of their work protected by other legislation?

The definition of the medical psycho-therapist, Section 1, 1010 (a) on page 10 seems vague to me. Why not say "psychiatry" rather than "medicine" in this statement.

Thank you for offering me the privilege of making my comments.

Sincerely yours,

Rose B. Blum

John H. De Moully
Executive Secretary
California Law Revision Comm.
Stanford University, California

333 W. Laurel Dr.
Salinas, California
93901

October 29, 1968

Dear Mr. De Moully:

In answer to your letter regarding possible changes under the Evidence Code, I as a licensed clinical social worker offer the following comments:

Generally speaking, only licensed private practitioners need this extended privilege under law. Professionals employed by social agencies public or private (such as Welfare, Family Planning, Hospitals, Clinics, Schools, Probation and Parole, etc.), function as a member of that agency, representing its purpose in individual dealings with clients or patients. The privileges of confidentiality are governed by the nature and policy of the agency.

I suggest that the term psychotherapist be limited in the proposed Revision to psychiatrists, licensed psychologists, and licensed social workers. These are the only three professional disciplines that provide for specialized training in the knowledge, skills, ethics and practice of psychotherapy.

Essentially there is no social conflict between the psychotherapeutic goals and those of the judicial system. Both are for the promotion and protection of the welfare of the whole. The psychotherapist is as responsible for the "good" of the community as he is for the "good" of the individual patient.

A patient confides in a therapist willingly because he trusts in the professional judgement and ability of the therapist. Specific facts relating to detailed circumstances of life problems of a patient are not necessary for a therapist to know in helping that patient resolve emotional conflicts.

I would rather see the Psychology Licensing Law remain as is, than to see a blanket extension of the term psychotherapist and of the privilege of confidentiality.

As a recently licensed clinical social worker it is my understanding that beside a MSW degree, five years of clinical experience is required by the licensing law. Does California have two different categories of licensed social workers?

It has been the thinking of the National Association of Social Workers that practitioners engaged in private practice need five years of prior supervised agency experience. I would like to see such social workers licensed upon that basis, .. and included under the definition of psychotherapist.

Society is best protected by keeping standards high rather than in lowering and broadening them. Let the professions "earn" their privileges. If school psychologists for example feel a real need
(over)

for extension of privileges let them convince their own professional Association to broaden these privileges first within the profession of clinical psychology.

Very truly,

Lorraine M. Landau

(Mrs.) Lorraine M. Landau

**UNIVERSITY OF CALIFORNIA
SAN FRANCISCO MEDICAL CENTER**

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SANTA BARBARA • SANTA CRUZ

UNIVERSITY OF CALIFORNIA HOSPITALS

SAN FRANCISCO, CALIFORNIA 94122

November 7, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Tentative recommendation relating to "The Evidence Code #6. The psychotherapist-patient privilege."

Dear Sirs:

I commend your tentative recommendations concerning extension of the psychotherapist-patient privileged communication to school counselors, licensed clinical social workers, and licensed marriage, family or child counselors. I concur in your reasoning that these professionals establish essentially the same sorts of relationships with clients as do psychiatrist and psychologist psychotherapists and that their work with their clients requires the same protection of communication. I sincerely hope that the legislation is enacted.

In your proposal for legislation you strike out "examination" noting that "consultation" is broad enough to cover this. Presumably the law presently covers any relationship between "psychotherapist" as presently defined and that psychotherapist's patient. Your interpretation to that effect was clarifying to me since I had sometimes wondered if communications to me in my role as psychodiagnostician were covered in the same way as those I receive in my role as psychotherapist.

Sincerely,

Leslie A. Davison, Ph.D.

Leslie A. Davison, Ph.D.
Asst. Clinical Professor of Medical
Psychology (Psychiatry)
Psychologist II
Licensed Clinical Psychologist

LAD/js

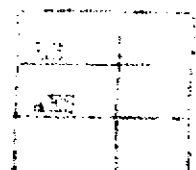


EXHIBIT XXXVII

PERSONS SENDING COMMENTS ON TENTATIVE RECOMMENDATIONS

WHOSE LETTERS WERE NOT REPRODUCED IN FULL

1. S. A. Szurek, M.D., Professor of Psychiatry, San Francisco Medical Center, University of California, Department of Psychiatry
2. Helen M. Jambor, Ph.D., Mill Valley
3. Margaret A. Rose, Licensed Clinical Social Worker, Marin Counseling Service, San Rafael
4. Mark Schiffrin, Certified Clinical Social Worker, Marriage, Family and Child Counselor, School of Social Work, San Diego State College
5. Harold Gurish, Chief Social Worker, Department of Psychiatry, Permanente Medical Group, San Francisco
6. John F. Odenheimer, Certified Clinical Social Worker, Mental Health Services Division, County of San Mateo
7. John F. Ryan, M.D., Director, Child Guidance Clinic, Children's Hospital of San Francisco, San Francisco
8. M. J. Firestone, Ph.D., Beverly Hills
9. Hans A. Illing, Ph.D., Beverly Hills
10. Alice E. Abbe, E. Monte Community Child Guidance Center, El Monte
11. Helen M. Mills, Clinical Social Worker, Irving
12. Janet W. West, Marin Counseling Service, San Rafael
13. Mary El Gall, M.S.W., Pacific Palisades
14. Robert L. Martin, Psychiatric Social Work, Licensed Marriage, Family and Child Counselor, Los Angeles
15. D. Jacqueline Fleming, Clinical Social Worker, Santa Clara
16. Ernestine E. Smith, Clinical Social Worker, Hospital of the Good Samaritan, Medical Center, Los Angeles
17. LeRoy F. Mason, M.S.W., Van Nuys
18. Albert W. Mason, Psychotherapy, Pasadena
19. Elsie Herman, Clinical Social Worker, San Diego
20. Joan Robbins, Psychiatric Social Worker, San Francisco
21. Eyuena Gorman, San Marino

22. Patricia J. Medley, Clinical Social Worker, Hayward
23. Karen J. Murray, Clinical Social Worker, Santa Clara
24. Jon S. Mitchell, Clinical Social Worker, Santa Ana
25. Charlotte Krause, M.S.W., San Francisco
26. Albert Goldstein, Psychiatric Social Worker, Woodland Hills
27. Georgia Haener, Palo Alto
28. Charles H. Hust, Encino
29. Gareth S. Hill, Psychiatric Social Worker, Berkeley
30. William Litz, Licensed Clinical Social Worker, Los Angeles
31. Bernice Kravetz, Inglewood
32. Jean M. Maxwell, San Diego
33. Margaret J. Villers, Clinical Social Worker, Pasadena
34. Sally Mandel, Clinical Social Worker, San Francisco
35. Beatrice Hraca, Clinical Social Worker, Encino
36. Dorothy E. Howard, Clinical Social Worker
37. Wanda Alexander, Santa Clara
38. Georgia Baci, San Jose
39. Nolene H. George, Certified Clinical Social Worker, Mountain View
40. Edith K. Keim, Psychotherapy, Pasadena
41. Marlene Bolthoffer, Psychiatric Social Worker
42. Joann Kirkpatrick, Chairman Santa Clara Chapter, National Association
of Social Workers, Santa Clara
43. Herbert Shuger, Palo Alto
44. Kenneth W. Fors, Consultation on Individual and Family Problems,
Sacramento
45. Jean R. Schnaar, Certified Clinical Social Worker, Los Angeles
46. Lawrence Kaufman, Psychiatric Social Work, Sherman Oaks
47. Wilbur E. Wright, Service Director, American Cancer Society, San
Francisco

48. Dan Brody, Southern California Counseling Center, Long Beach
49. Larry A. Schwartz, Southern California Counseling Center, Long Beach
50. Jane Taylor Gora, Clinical Social Worker, Palo Alto