

Admin.

ns87
03/05/90

Second Supplement to Memorandum 90-19

Subject: Priorities, New Topic Suggestions, and Schedule for Work

Attached to this supplementary memorandum are copies of eight more letters we have received suggesting the Commission study Evidence Code Section 352.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

MAR 05 1990

1.3.90

RECEIVED

Unit 18
574 Boundary Street
SPRING HILL
Queensland 4000
Australia.

F. A. Plant, Ca L.R.C. Chair
4000 Middlefield Road, Suite d-2
Palo Alto, CA 94303-4739

Dear Mr F. A. Plant,

I am writing to you to express my deep concern about the case PEOPLE v YOUELL. I enclose with this letter documentation from Dr Youell's lawyers Patrick E Clancy and Garry T Ichskawa, and also from Daniel J Russo, of Russo Weintraub and Bellia, Attorneys at Law.

I believe if you take the time to read these you will agree with me that there has been a fundamental miscarriage of justice and therefore would ask if you can help me by answering the following questions:

1. Why, in the light of the Medical Information Act and the Californian Civil Code # 56.05 Dr Youell was denied his 6th amendment right to defend himself?
2. Why hasn't the Commission on Judicial Performance investigated Dr Youell's case in light of this?
3. Why hasn't the Commission investigated the Trial Court's refusal to give the requested defense instructions that constituted prejudicial error?

The Commission has the authority to conduct and hear charges against any Judge of a Californian Court and also to issue admonishments for engaging in an improper action, a dereliction of duty or conduct prejudicial to the admission of justice that brings the judicial office into error.

4. Why was Dr Youell's sentence so long?
5. Why hasn't the Board of Prison Terms reviewed it and the mistake made by the Courts in preventing Dr Youell's right to defend himself?

The Board of Prison Terms has, I understand, the authority to conduct public reviews of all determinately sentenced prisoners and may recommend that the sentence be recalled.

Surely a defendant should have the absolute right to present a defense: especially in cases that are susceptible to false accusations. No court should be allowed to exclude it when that person (as in Dr Youell's case) is at risk in dealing with a very dysfunctional family.

Thank you for giving of your time to consider my letter. I greatly look forward to hearing from you.

Yours sincerely,

Alan Edwards
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Alan Edwards
AM MBE JP

FEB 28 1990

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Monsieur F.A. PLANT
CA. L.R.C. Chair

Jeudi 8 Février 1990

Monsieur,

Par la présente, je souhaite porter à votre attention le cas du Docteur Alain YUELL, psychologue et sexologue, emprisonné en Californie.

Il me semble que tous les moyens n'aient pas été mis en oeuvre dans cette affaire et que le Docteur YUELL ait été reconnu coupable de crimes qu'il n'a pas commis.

*Je vous prie d'agréer
mon meilleur salut et mes sentiments les meilleurs*

H. Champagne

MAR 01 1990

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F. A. Plant, Ca. L.R.C. Chair
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

February 15, 1990

Dear F. A. Plant,

I have seen evidence that our judicial system is in trouble. I am writing to you because you are an elected official and you have the power to solve these troubles.

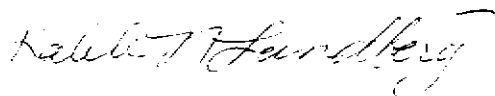
A while ago, Dr. Alain Youell was denied a fair trial because the courts were allowed to abuse Section 352 of the California Evidence Code. What this has turned into is a concern that affects both therapists and lay people, alike.

The Sixth Amendment to our Constitution guarantees us the right to defend ourselves if falsely accused. Dr. Youell was denied this very basic of rights! When one defendant is denied the right to a full defense, then the system has failed all of us. It is my fear that this sort of misuse of any of the Amendments in our Constitution could lead to other breakdowns in our system. The Constitution is the backbone on which our great country was built. To misuse or abuse our Constitution is simply "un-American".

Section 352 of the California Evidence Code needs to be revised so that any and all people accused of a crime will be able to receive a fair trial. Please act on this issue, and change it so that our system can be run fairly - as it was originally intended.

THANK YOU FOR YOUR HELP!

Sincerely,



Kalle N. Lundberg

February 16, 1990

CA LAW REV. COMMENT

FEB 26 1990

RECEIVED

Genevieve Cushing
1-36-10 Ootzumachi
Nerima-Ku, Tokyo
178 Japan

Dear F.A. Plant,

I am concerned about my future and the future of all those who work with children who come from dysfunctional families. As a part-time teacher and caring neighbor I am extremely vulnerable to being falsely accused of child molestation. Evidence Code Section 352, which allows the court at their discretion to not allow records of treatment of patients from dysfunctional families as evidence, denies me my sixth amendment right to defend myself if I am accused. Evidence Code Section 352 must be reversed to ensure a fair trial for every person. This code must allow the defendant to present all relative evidence of significant value to his defense, without this the trial is not a fair trial.

Dr Alain Youell's case is a precedent setting case by which vulnerable people are being tried today. His case is a perfect example of abuse of Evidence Code Section 352.

Because the court ignored his right to introduce negative transference, Dr Youell could not prove why the child would falsely accuse him personally. The court also failed to give requested instructions to the District Attorney and jury.

This case must be reversed so I cannot be put in the same horrible situation that Dr. Youell has suffered if I am accused.

I urge you, as an elected official, to do something to change and amend Section 352 of the California Evidence Code so that all people accused will receive a fair trial.

Sincerely,

Genevieve Cushing

California Resident
SS# 548-39-0262

MAR 02 1990

RECEIVED

February 23, 1990

Mr. F. A. Plant
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Plant:

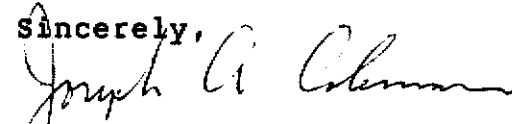
I would like to bring to your attention the trial of Dr. Alain Youell (State of California legal identification attached).

I believe Dr. Youell, a psychologist, was denied his sixth amendment right to a fair trial when the court excluded evidence under Evidence Code Section 352. This section allows the court discretion to select evidence, and in Dr. Youell's case they denied him the opportunity to present his full defense. This is not only an injustice to Dr. Youell but sets an unfortunate precedent in which professionals in this field, as well as divorced parents, can be denied their right to present a proper defense.

If the reason for omitting this evidence is the protection of the child, then it leaves the professional who attempts to help him vulnerable to prejudice and false accusation. It leaves the jury without all the facts to make a fair decision.

I urge you and your staff to investigate this case and hope you will see the injustice and take steps to rectify it.

Sincerely,



Joseph A. Coleman
140 East 72nd Street
New York, NY 10021

jac:vb
attch.

28 February 1990

MAR 05 1990

RECEIVED

F.A. Plant
Ca. L.R.C. Chair
4000 Middlefield Road
Suite D-2
Palo Alto, CA. 94303-4739

Dear Mr. Plant:

I am a California attorney serving principally the American community in Paris, France. I am writing to you in regard to the child molestation conviction of Dr. Alain Youell by the Superior Court of California, County of Contra Costa, and the denial of his appeal by the Court of Appeals of the State of California. Before I left California, I was personally acquainted with both Dr. Youell and the young man who made the accusations which led to conviction. Dr. Youell is presently in San Quentin State Prison.

It appears to me that Dr. Youell did not get a fair trial. Dr. Youell's attorneys have told me that the trial judge excluded practically all of their pertinent evidence. This evidence was a detailed account of the psychological problems of the young man who made the molestation accusations and the related psychological problems of the family within which he was growing up. This evidence, if it had been heard by the jury, would have tended to establish the young man's ulterior motives for making the accusations. Dr. Youell was convicted solely on the testimony of this one young man who had originally been brought to Dr. Youell for therapy after a suicide attempt.

The prosecuting attorney objected to the admission of this evidence on the grounds of "trashing the family", and the trial judge excluded it under California Evidence Code "catch-all" Section 352. I suggest that the defendant has been "trashed" by being sent to San Quentin State Prison for eight years.

I am asking you, as an elected government official, to investigate the case of Dr. Alain Youell and to take steps to rectify this injustice. Enclosed are documents explaining the issues in further detail.

Very truly yours,



Norman REUTER
Attorney at Law

FEB 27 1990

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440 Inverness Dr.
Pacifica, Ca 94044
February 24, 1990

Hon. F. A. Plant:

We are writing to ask you to amend the California Evidence Code Section 352 which allows the courts, under certain circumstances, to exclude relevant trial evidence at the courts' discretion.

Profesionals working with children and dysfunctional families are highly vulnerable to false accusations of child molestation. A number of professionals who have actually been accused of and brought to trial for child molestation have been unable to present a complete defense. They have been wrongly convicted and sent to prison. Under Section 352 the courts did not allow presentation of the therapists' records of treatment of children from dysfunctional families -- evidence which was critical to the defense.

The trial of Dr. Alain Youell is a case in point. Our friend Dr. Youell, whom we believe to be innocent, was convicted of child molestation and is currently serving a prison sentence in San Quentin. Dr. Youell wanted to present a defense of negative transference to explain his patient's accusations. However, because of Section 352, the court was able to rule all evidence of the factual basis of the negative transference inadmissable. (Please see enclosures from the law offices of Russo, Weintraub & Bellia, and Clancy for more details.) This ruling essentially resulted in Dr. Youell not being able to defend himself against these accusations.

We are asking you, as an elected official, to amend Section 352 of California Evidence Code to enable all persons accused of a crime to be able to present the complete defense necessary for a fair trial. In addition we are asking you to reverse the case of Dr. Youell, who was unjustly accused, unfairly tried and is suffering a prison sentence he does not deserve.

Thank you for your consideration.

Sincerely,



Shirley and Craig Jensen

MAR 05 1990

RECEIVED

424 Callan Avenue, #116
San Leandro, Ca. 94577
February 23rd, 1990

F. A. Plant
Ca. L.R.C. Chair
4000 Middlefield Road, #D-2
Palo Alto, Ca. 94303-4739

Dear Mr. Plant:

I am writing in regards to Evidence Code 352, which permits a judge to rule on which evidence can be admitted in court, and which cannot. As a single person, it scares me that someone can point a finger and say that I molested them, and my only defense is "I did not" - and all other defense is ruled against by a judge.

I refer specifically to the case of People Vs Youell of 1987, in which case Dr. Youell was convicted and sent to prison because the court felt that professional testimony would do damage to a family's reputation.

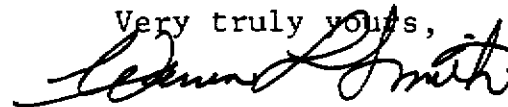
Since Dr. Youell was my therapist at the time, I felt strongly that he was not guilty of the charges of molestation, and was shocked when he was convicted - and convicted only on the prosecutor's evidence! This type of justice smack's of the famed witches' trials of Salem, Massachusetts, back in the 1600s!!!

More upsetting are the numerous reports in newspapers of child abuse which, when followed through, often result in total acquittal of the defendant because the child either fabricated the entire story, or was put up to the situation by a parent (or peer) who had an ax to grind with the accused. If evidence hadn't been permitted - another innocent person would have been convicted!

While it is commendable to try and maintain a family's reputation, is it not just as important to maintain the reputation of professionals, such as therapists, doctors, teachers, principals, etc? The only way this can be done is by assuring a fair and complete trail for each accused person.

In closing, may I again urge your active support in the amendment of Evidence Code 352, and also for the retrial of Dr. Alain Youell.

Very truly yours,



Warren L. Smith