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PARENT-CHILD PRIVILEGES

HONORS SENIOR PROJECT

ANGELA FURCA

MAY 22, 1989

I. FOREWARD

*FF - Very well done.
good research - free
quality of the problem*

This paper will demonstrate the desirability and necessity of recognizing the parent-child testimonial privilege. As this is a legal research paper, it will present arguments for both sides of the issue, while proving that the parent-child testimonial privilege deserves recognition and is fundamental in maintaining healthy family relationships.

II. INTRODUCTION

The term privilege is derived from the "Latin phrase *privata lex*,"¹ and is defined as a "private law applicable to a small group of persons as their special prerogative."² Although this phrase originated in ancient Rome, "privileges protecting special relationships existed centuries before Rome coined a term for them."³ The Romans understood that the family was the foundation of society, and early Roman law acknowledged the rule of "*testimonium domesticum*, which mandated that parents, children, patrons, freedmen, and slaves could not be compelled to give testimony against each other."⁴

The family is still the foundation of society, and protection of familial relationships is essential to society's existence. The early Romans exhibited great wisdom and insight in recognizing such privileges, and our courts should respect and follow such awareness. Privileges "guard and foster relationships that society deems desirable and worthy of protection."⁵ To deny the existence of parent-child

privileges rejects the contention that families are desired by society. Therefore, since our society greatly values the concept of family, the courts can't protect society's interest unless they recognize the existence of parent-child privileges.

III. LEGAL ARGUMENTS SUPPORTING PARENT-CHILD PRIVILEGES

"The ancient Romans and Jews recognized that the progress of civilization depended upon the protection of society. The most efficient and desirable means to protect society was to protect the sanctity of the family and to foster strong family relationships. This remains true, for the husband-wife and parent-child relationships have the most enduring bonds and are not conditioned solely upon economic relationships."⁶

A. CONSTITUTIONAL ARGUMENTS

Throughout history, the United States Supreme Court has recognized several fundamental rights involving the family. Whether these rights stem "directly and explicitly from the Constitution,"⁷ or "fall within the constitutionally protected penumbral rights,...the Court consistently has been hesitant to intervene in family affairs, recognizing that familial autonomy and privacy are at the very heart of the existence of a democratic society."⁸ "Since parent-child communications are at the heart of family life and relationships, they can properly be classed as fundamental along with those familial rights that the autonomy strand of the right to privacy is designed to protect."⁹ Several cases secure the right of privacy and the constitutional rights of family autonomy.¹⁰

1. Development in State Courts

In *In re A & M*,¹¹ the court concluded that under some circumstances communications made by a minor child to his parents within the context of a confidential family relationship may be shielded from revealing information as a matter of constitutional right. The court reached its conclusion by balancing the state's interest in receiving all relevant evidence against the family's constitutional right to privacy. It held that in this instance, "the interest of society in protecting and nurturing the parent-child relationship was of such overwhelming significance that the state's interest in fact-finding must give way."¹²

In *People v. Fitzgerald*¹³, the Court enlarged the holding of *A & M*, and ruled that a parent-child privilege exists, "grounded in law, logic, morality, and ethics."¹⁴ "Our Constitution protects the sanctity of the family,...precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."¹⁵ Despite the lack of legislative articulation, the court held that a parent-child privilege existed in New York, "flowing directly from both the federal and state constitutions which have fostered the recognition of what has come to be known as the right to privacy."¹⁶ The court not only recognized the privilege, but also held that it extended beyond the child's adolescence. It reasoned that the parent-child relationship of "mutual trust, respect, and confidence was one that should be fostered throughout the lives

of the parties and one that merited protection through a testimonial privilege."¹⁷

In an effort to prevent judicial development of new privileges, New York's proposed Code of Evidence would codify existing law by limiting privileges to those specifically provided by constitution or statute. In apparent agreement with the decisions in *A & M* and *Fitzgerald*, the proposed code includes a parent-child privilege. The New York State Law Revision Commission justified acknowledgment of the privilege through two "imperative social considerations: first, the role of the parent in developing and establishing a child's emotional stability, character, and self image; and second, the well-recognized principle that there are certain private realms of family life which the state should not enter."¹⁸ The proposed rule would extend the range of the privilege beyond that recognized by the courts, allowing it to be claimed by either the parent or the child with no restriction based on age.¹⁹

2. Development in Federal Courts

Federal courts have used three approaches to parent-child privilege claims. Some have completely denied the privilege, refusing to discuss the issue; others have rejected the proposal after examining the claim; and two have accepted the privilege to some extent.²⁰

Thus far, only two federal district court decisions have favored the parent-child privilege. The first, *In re Greenberg*²¹, recognized the privilege only under limited circumstances. In *Greenberg*, a grand jury was conducting an investigation of

Susan Greenberg and others suspected of marijuana importation.²² Susan's mother, Helen Greenberg, was visiting her at the time of the alleged arrival of the marijuana. Helen was subpoenaed to testify about her visit and generally about her relationship with her daughter. She refused to testify on the grounds that her orthodox Jewish religion prohibited a parent from testifying against her child.²³ The court recognized that there was a conflict between the "grand jury's right to every person's evidence and an individual's freedom to exercise her religion and to maintain family privacy."²⁴ The court noted that only state interests "of the highest order could override legitimate claims of free exercise of religion."²⁵ Thus, the court upheld Mrs. Greenberg's free exercise challenge and did not require her to testify.

In the second and most recent federal case to consider and accept the parent-child testimonial privilege, *In re Agosto*²⁶, the court came to a much broader conclusion than did the court in *Greenberg*. *In re Agosto* is an important case in that it not only recognizes the privilege in the setting of private communications, but also acknowledges the privilege in the context of criminal proceedings.²⁷ Charles Agosto petitioned the district court to quash a special grand jury "subpoena ad testificandum"²⁸ because his testimony might be included as evidence used to indict his father. Agosto petitioned the court to issue a protective order prohibiting law enforcement officers from questioning him "concerning any matter that might be used to secure an indictment of his father."²⁹ The court thoroughly examined the parent-child

privilege in terms of both legal and social policies. It compared the parent-child privilege to other acknowledged testimonial privileges, and concluded that the parent-child privilege could be supported based on the rationales behind the marital privilege and the professional privileges. The court reasoned that the parent-child privilege is "necessary to protect and preserve family unity as well as to prevent disclosure of confidential communications that in some way may incriminate the communicator."³⁰

While the court recognized that there is a right to family privacy under constitutional law, it also recognized that such a right is not absolute. The court held that when a state can demonstrate that a regulation supports a compelling state interest, a challenged statute will be sustained even though the ordinance infringes upon family privacy.³¹ The court developed a balancing test that required a weighing of family privacy rights against the state's interest in obtaining pertinent information. The court noted that in cases in which the intrusion by the state greatly invades family privacy, the state must make an even stronger showing that the regulation furthers the state's interest.³²

After a complete analysis of current case law, and political and social policy, the court upheld Agosto's motion to quash the grand jury subpoena. The court emphasized the inconsistency of upholding a testimonial privilege for confidential communications to spouses while denying the same privilege to parents and children within "the same indissoluble family unit."³³ The court concluded that the parent-child

privilege applied to confidential communications between parent and child in criminal proceedings in which either parent or child is required to be an adverse witness against the other.³⁴ The court based its decision on the theory that the privilege is supported not only by the confidential nature of communications between parent and child, but also by the constitutional right of family privacy.³⁵

The Court ruled in *Roe v. Wade*³⁶ that although the Constitution does not "explicitly mention any right of privacy...the Court has recognized that a right of personal privacy does exist under the Constitution."³⁷ The Court agreed that the "autonomy interest in making the abortion decision was constitutionally protected, yet did not go so far as to entirely subordinate the state interest to the autonomy interest."³⁸ The abortion decision concerning a mother and her unborn baby is very private and personal. The Court, therefore, concluded that the "right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation."³⁹ Obviously, the Court decided that the woman's right to privacy in dealing with her unborn baby in this situation was more compelling than the state's interest.

Perhaps the most relevant and controversial case supporting familial privacy and privileges is *Griswold v. Connecticut*.⁴⁰ The Court held that the Connecticut statute which made the use of contraceptives a criminal offense, was "invalid as an unconstitutional invasion of the right of privacy of married persons."⁴¹ The majority held that this case "concerns a

relationship lying within the zone of privacy created by several fundamental constitutional guarantees...and a governmental purpose to control or prevent such activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." ⁴² In *Griswold*, the Court "established the ancient right of familial privacy in American law...and recognized that securing specific guarantees of the Bill of Rights required it to recognize the penumbras of those rights."⁴³ Today, this significant decision remains the "foundation of the right to privacy within the family setting."⁴⁴

"The Court's present view of familial autonomy is stated best in *Moore v. City of East Cleveland*."⁴⁵ The Court struck down a zoning ordinance that prohibited extended family from living under the same roof. The Court stressed that "the fourteenth amendment long has protected individual liberties regarding marriage and family life...The Court agreed with the rationale applied in *Meyer*, *Pierce*, *Griswold*, and *Yoder*, and held that the due process clause of the fourteenth amendment sheltered familial autonomy."⁴⁶

B. FEDERAL RULE OF EVIDENCE 501

Federal Rule of Evidence 501 gives the federal courts "a statutory guide to use when dealing with claims for the adoption of a new privilege."⁴⁷ The legislative history supports the contention that rule 501 leaves the door open for the judicial adoption of privileges, such as parent-child privileges. "Rule 501 is not intended to freeze the law of privilege as it now exists...it is intended to provide the

courts with the flexibility to develop rules of privilege on a case-by-case basis."⁴⁸ Obviously, by adopting Federal Rule of Evidence 501, the courts recognize the importance of creating new privileges, such as parent-child privileges, and have paved the way for the adoption of such privileges. Mankind needs to display the same wisdom in acknowledging the importance and fundamentality of familial privacy privileges, strongly rooted in parent-child privileges.

C. THE WIGMORE TEST

Dean Wigmore offers a traditional justification for the existence of a privilege. "Communications made within a given relation should be privileged only if the benefit derived from protecting the privilege outweighs the detrimental effect of the privilege on the search for truth."⁴⁹ To pass the Wigmore Test, a prospective privilege must meet four fundamental conditions:

1. The communications must originate in confidence that they will not be disclosed;
2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
3. The relation must be one which in the opinion of the community ought to be sedulously fostered; and
4. The injury that would inure to the relation by disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the litigation.⁵⁰

Although the Wigmore test applies only to confidential communications, and not to testimonial privileges, a parent-

child confidential communications privilege satisfies all four Wigmore conditions. First, "all parent-child communications clearly originate in confidence; the parent-child relationship naturally breeds that type of communication. Parents and children typically participate in conduct which they assume will remain private."⁵¹ Second, "confidentiality is obviously essential to the parent-child relationship...An atmosphere of confidentiality coupled with the child's dependency upon the parent allows the child to admit wrongdoings to the parent in search of guidance."⁵² Third, the family is the foundation of society, and "the heart of the family unit is the parent-child relationship."⁵³ As noted earlier, society deems familial relationships as desirable, therefore, the parent-child privilege clearly meets the third condition. Finally, the potential harm to the parent-child relationship clearly exceeds the benefit to be gained by the "correct disposal of the litigation."⁵⁴ If either the parent or child were compelled to testify, betraying the other, "the trust that existed between the two would cease, possibly never to be regained."⁵⁵

D. EXISTING PRIVILEGES IN AMERICAN LAW

The attorney-client, priest-penitent, husband-wife, and psychotherapist-patient privileges are "firmly rooted in American law . . . Two existing privileges most similar to the parent-child privilege are the psychotherapist-patient and spousal privileges. Both relationships are dependent on a free flow of highly personal information. Both situations need privacy and confidentiality to function properly."⁵⁶ Society protects such relationships from state interference

because it realizes they could not survive if they were not "shrouded in confidentiality."⁵⁷ The state legislatures, by adopting the other two privileges, formally recognize the importance of such relationships. However, they need to go one step further and adopt a parent-child privilege because the "parent-child relationship is life-long. Unlike the other relationships, it is terminated only upon the death of the parent or the child, and not merely by the payment of a fee or by a judicial decree."⁵⁸

IV. SOCIAL POLICY ARGUMENTS

A. FAMILY HARMONY

"The protection of peace and harmony within the family is a major social policy rationale underlying the parent-child privileges. A wholesome family relationship is something society should continue to promote."⁵⁹ The home and the family are the first social organization a child encounters. "The sanctity, serenity, freedom, and organization of the unit have a marked effect upon the personality and development of the child and upon the child's ability to become an effective and operative part of the community. Only the family unity appears able to provide the stability of personal relationships upon which the child's mental and moral growth greatly depends."⁶⁰ The parent-child privileges against forced exposure of confidential communications aim to "preserve the sense of trust that forms the basis of a parent-child relation-

ship."⁴¹ If the basis of familial relationships is destroyed, then so is the nucleus of society.

B. NATURAL REPUGNANCY

Aside from destroying familial harmony, "compelled adverse testimony of a confidential communication would be repugnant to social sensibilities."⁴² "The actions of totalitarian governments should serve as adequate reminders of the horrors which thrive when certain relationships are deemed subordinate to the state."⁴³ In particular, the "specter of a child taking the stand to testify as to the crimes of his parents evokes the worst excesses of the totalitarian stand."⁴⁴ The natural repugnancy argument is used by the courts to support the rationale behind spousal privileges. It should also apply to parent-child privileges because it is a "relationship that is in need of, and possibly more deserving of, protection and nurturing."⁴⁵

C. WITNESS'S DILEMMA

The situation of parents and children testifying against one another puts the witness in a difficult position. Such a witness has three basic choices:

1. The parent or child can comply and testify, thus condemning his or her parent or child;
2. The witness can refuse to testify, thus risking contempt of court;
3. The witness can deliberately lie under oath to protect the relative, thus breaking the law him or herself.⁴⁶

Obviously, all of the above situations foster undesirable results. For example, in *United States v. Ismail*, Ismail's son was called to testify against him, and because no parent-

child privileges were granted by the court, "to protect his father, he had lied by testifying that he knew nothing about his father's alleged involvement in drug trafficking."⁶⁷ After admitting his perjury he contemplated suicide, and after his testimony, he was banished from his community.⁶⁸ The witness's dilemma is a serious problem which could be eliminated by the adoption of parent-child privileges. If the witness chooses alternative two or three, justice is not being pursued and, therefore, the witness should not be placed in such a dilemma. "Parents or children should not be incarcerated for what could be interpreted as the crime of family loyalty."⁶⁹

V. LEGAL ARGUMENTS OPPOSING PARENT-CHILD PRIVILEGES

Although there is a strong case advocating the adoption of parent-child privileges, many issues raised in support of such privileges may also be used to oppose such a decision.

A. FEDERAL COURT DECISIONS

The first federal court case involving consideration of a parent-child privilege, *In re Kinoy*⁷⁰, used the first approach of denying the privilege while refusing to discuss the issue. Arthur Kinoy, an attorney, was subpoenaed to appear before a grand jury to testify about his daughter's whereabouts. He refused to appear, claiming both an attorney-client privilege and a parent-child privilege. The district court rejected Kinoy's argument that knowledge of his daughter's location had come to him as an attorney rather than as a parent and "minced no words in dismissing the claimed parent-child privilege."⁷¹

In *United States v. Jones*⁷², the Fourth Circuit Court took the second approach, analyzing but rejecting the claimed privilege. The court relied upon the United States Supreme Court's decision in *Trammel v. United States*.⁷³ It reasoned that because testimonial privileges contradict the fundamental principle that the public has a right to every man's evidence, such privileges should be recognized "only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth."⁷⁴ Noting that in *Trammel* the Supreme Court had restricted the testimonial privilege between spouses, the *Jones* court refused to expand the law of privileges in the family setting by acknowledging a new one.⁷⁵ The court did not, however, reject the possibility that it might recognize the privilege under other factual circumstances. Although the court's holding rejected the claim of a parent-child privilege, its recognition that the privilege may exist in certain circumstances supports the desirability of the privilege.

B. CONSTITUTIONAL ARGUMENTS

Since the existence of parent-child privileges is tied to the existence of privacy rights, refuting the latter raises doubts as to the rationale behind such privileges. As Justices Black and Stewart claimed in their dissenting opinions in *Griswold v. Connecticut*, "there is no constitutional right of privacy."⁷⁶ There are "guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to

certain activities. Such, for example, is the Fourth Amendment's guarantee against unreasonable searches and seizures...it belittles that amendment to talk about it as though it protects nothing but privacy."⁷⁷

Although this evidence appears to refute the argument for parent-child privileges on the grounds of the right of privacy, such opposing assertions should not be weighed too heavily. The fact that the Constitution does not explicitly guarantee any right to privacy, does not mean that individuals do not have a fundamental right to privacy. Only original intent theorists would conclude that no right to privacy exists, because they simply read the Constitution as it stands, without modifying it somewhat to meet today's circumstances. There are flaws with original intent theory. How is one to know exactly whose intent we are to follow: the actual drafters, or those who ratified the document? If the judges will simply look beyond the actual printing on the document, they will see that a fundamental right to privacy is clearly inferred, and therefore, should be granted to all individuals.

In *Bowers v. Hardwick*⁷⁸, the Court held that the Georgia statute criminalizing homosexual sodomy is constitutional. Hardwick asserts that results of the Georgia statute should be different where the conduct occurs in the privacy of the home. However, the Court held that "the fact that the homosexual conduct occurs in the privacy of the home does not affect the result."⁷⁹ "In constitutional terms there is no such thing as a fundamental right to commit homosexual sodomy . . . the proscriptions against sodomy have very ancient roots.

Decisions of individuals relating to homosexual conduct have been subject to state intervention throughout the history of Western Civilization."⁸⁰ The Court's basic contention is that simply because an act occurs within the privacy of the home, the act or information (if against the law) is not sheltered from the law and the judicial process. Once again, the supposed fundamental right of privacy is refuted, generating a loss of support for parent-child privileges.

Again, this second argument against parent-child privileges really has no relevance to the case for such privileges. This case involves an act which is clearly criminal (sodomy), and the precedence set by the decision relates only to acts which are against the law. Parent-child communications do not break any laws, and certainly, due to the witness's dilemma, the adoption of parent-child privileges will actually promote justice because it will alleviate contempt of court and perjury dilemmas.

An example of a court's declination to recognize a parent-child privilege resulting in a contempt of court ruling is in the Singer-Swapp case. Hans Benjamin Singer, 15-year old son of Vickie Singer, was found in civil contempt of court for refusing to testify before a federal grand jury about the actions of the Singer-Swapp family.⁸¹ Vickie Singer claimed the child's exclusion from testifying stems from the First Amendment's freedom-of-religion clause, and that the child has religious objections to testifying against his mother. Mrs. Singer's attorneys also claimed that the child would suffer psychological damage if forced to testify against his mother.⁸²

Nevertheless, U.S. District Judge J. Thomas Greene ruled "there is no federal right to a parent-child privilege in the case that could prevent testimony. Such a privilege exists between married couples."⁸³ After being granted a plea for an appeal, the four appeals court judges ruled that "the free exercise of religion is a fundamental right under the U.S. Constitution, however, this freedom to practice one's religion is not absolute."⁸⁴ The appeals court held that the claimed First Amendment privileges are "out-weighted by the government's interest in investigating crimes and enforcing the criminal laws of the United States."⁸⁵

Judge Greene's view that testimonial privileges exist between spouses, but not parents and children, displays extremely narrow-minded thought. He is in effect saying that the spousal relationship is one worth fostering, while the parent-child is not. While the decision of the appeals court achieves the same result as Judge Greene's, their reasoning is a bit more sound. At least they applied a balancing test between the asserted First Amendment privileges and the state's interest in combatting crime. However, their ruling is wholly inconsistent with the holding in *Greenberg* which held that only state interests of the highest degree could override legitimate claims of free exercise of religion. The *Greenberg* holding is significant, and while the *Singers* and *Swapps* were involved in some serious crimes, it wasn't necessary to compel a 15-year old boy to testify against his mother, especially since she was not alleged to have committed any of the crimes herself.

B. FEDERAL RULE OF EVIDENCE 501

In the *United States v. Davies*⁸⁶, the Court held that "no privilege exists in criminal cases for communication between parents and their children."⁸⁷ Due to the flexibility of Rule of Evidence 501, the Court "reaffirmed the narrowness of privileges."⁸⁸ Based upon past privilege modifications, the Court felt it would be inappropriate to "engraft a parent-child privilege into Rule 501."⁸⁹ It also held that the defendant's "generalized claims regarding the sanctity of family life must give way to the overriding needs of the truth-seeking process."⁹⁰

The Court held that no parent-child privileges exist in criminal cases, but everyday parent-child communication and privacy rights are not necessarily criminal. Perhaps if the crime in question is serious enough to make society's best interest to seek the truth, then the parent-child privilege may be overlooked. However, in general, this case does not prove that parent-child privileges should not be recognized at all.

C. THE WIGMORE TEST

A common criticism of Dean Wigmore's privilege test is that "on their face these criteria are open-ended enough to encompass practically any asserted privilege, they seem to provide little guidance to legal analysis."⁹¹ Wigmore considers only "systematic harms in the balancing test established by the fourth condition. Wigmore lays the groundwork for such an approach by assuming that every witness is legally obligated to testify unless extrinsic policy

justifies an exception. Thus, the traditional justification ignores specific injury to those actually before the court; the protection of any particular relationship or the preservation of any particular confidence is not valued as an end in itself."⁹²

Another frequent criticism challenges the notion held by Wigmore that existing privileges actually encourage communications . . . people typically know little or nothing about their privilege and that, even if they did, the knowledge would rarely alter their communicative behavior."⁹³

First, the contention that Wigmore's conditions are too broad can be refuted. Since all of the existing (and prospective) privileges are not exact, the conditions have to be fairly extensive so as to allow for different types of privileges. Referring to the second criticism, if privileges were publicized, more people would confide in those with whom they hold a privilege because they would be assured confidentiality. These trivial criticisms are not serious enough to outweigh the benefit to be gained by the adoption of parent-child privileges.

VI. EFFECT ON PUBLIC POLICY

The adoption of parent-child privileges would have a profound effect on public policy. Many people would be grateful, while others would be outraged. Not everyone would be pleased, no matter what the specific policy, but the important point is that finally a decision will have been made. Although all policymakers may not like the parent-child privilege, they would have a structured set of guidelines, and there would no longer be any debate by the judges as to whether or not

parent-child privileges should be invoked, unless the statute allows (like Federal Rule of Evidence 501) the courts to acknowledge such privileges on a case-by-case basis.

VII. CONCLUSION

Although the recognition of parent-child privileges is admirable, some difficulties may arise unless the statute is very specific about criteria such as: age limits (if any), criminal cases, case-by-case basis, privacy of the home, etc. These decisions need to be made by the legislators, and although the parent-child relationship ends only upon the death of one party, the proposed privileges should exist until the adult age of 21. The reason for this is that by age 21, many offspring are living on their own, and perhaps have a family of their own. In any event, by age 21 the "child" should be socially responsible, and recognize his/her role in the promotion of justice in a democratic society which favors the greatest good for the most number of people.

Although the legislators should create a statute which includes some very specific details about the parent-child privilege, the courts should have some input as well. After all, our courts are here to interpret the law, and if we afford them no leverage at all, then their existence is moot. Therefore, Congress should create a law which: 1) recognizes the desirability of a parent-child privilege at least until the age of 21, but may extend further at the court's discretion (the courts may find an unusual situation where the child is still very psychologically and emotionally dependent upon his parents), 2) requires the courts to contemplate such a

privilege in all cases in which it is asserted (however, the courts should retain their power to balance constitutional concerns against significant state interests, which will vary from case to case), and 3) denies the existence of a parent-child privilege in child abuse cases.

By acknowledging the desirability of a parent-child testimonial privilege, legislators will be giving the privilege their stamp of approval, while refraining from creating an overly broad statute. While such a privilege is necessary in many cases, it would be ludicrous to mandate its acceptance in all instances. For example, in the case of a mass murderer like Charles Manson, the interest of the state and its inhabitants in furthering justice clearly outweighs any family testimonial privilege. In such a scenario, it is entirely possible that the child himself may be endangered if the culprit is not put behind bars. In the instance of child abuse, the safety and well-being of the child are certainly more critical than fostering a family relationship which is obviously detrimental.

In light of this, and the fact that in the past most courts refused to even consider the idea of a parent-child testimonial privilege, the proposition that all courts be required to contemplate such a privilege should alleviate much of the courts' narrow-mindedness.

The parent-child testimonial privilege is worthy of recognition under most circumstances to maintain the trust and privacy which characterize the family, the heart of our society. However, to require their acceptance in all cases by

taking away the courts' power to adjudicate would eventually harm society, because in some cases truly dangerous individuals would be free to roam the streets and perhaps harm others.

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