

PERSPECTIVE

No one wins when parent is pitted against child

BY EUGENE M. HYMAN

THE recent alleged events involving President Clinton and Monica Lewinsky have caught the world's attention and have made almost everyone into a voyeur. To legislators truly interested in "family values," the case presents legal issues of great importance.

Independent Counsel Kenneth Starr is threatening to subpoena Lewinsky's parents to a federal grand jury to learn what, if anything, she told them about the alleged affair with the president. At first glance, this might not seem like much of an issue — but it is, of giant proportion. California and federal law recognize that communications among and between certain people are privileged, that is, the conversations cannot be divulged by threats of contempt; by force.

Some common examples of privilege are the attorney-client, physician-patient, psy-

chotherapist-patient, clergyman-penitent and the husband-wife privilege. Federal and state law sometimes differ as to what specifically is entitled to privilege, conversations vs. actions and who is entitled to assert the privilege — the physician or the patient, or both.

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The husband-wife privilege historically developed as a means to preserve marital harmony and is really two privileges. Conversations between husbands and wives intended to be private, occurring during their marriage, are not discoverable unless waived by one of the spouses. The other part of the privilege prevents one spouse from being required to testify against the other in a proceeding without the witness spouse's permission. There are limited exceptions when privilege does not apply; for example, crimes by one spouse against the other or their child. It is assumed in this latter type of situation that there is no relationship worthy of protecting and hence no privilege.

Nowhere in either federal or state law is a similar privilege provided for a child with respect to confidential conversations with a parent or with respect to a privilege against testifying against the parent. Isn't the parent-child relationship, like the marital relationship, worthy of such protection? After all, who is the child's therapist, confidante, if not the parent? The parental relationship is subject to the same kinds of emotional damage from forced disclosure of confidential communications as is the marital one. Obviously there would likewise need to be exceptions in criminal, family law or
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Protecting the relationship between parents and children

■ PRIVILEGE

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other cases where the child is alleged to be the victim.

As a judge in Family Court, I frequently see situations where one parent wants to use the children to give evidence against the other. The issues usually are about alleged drug usage by one of the parents. While it is true that the trial judge has discretion whether or not to permit a child witness to testify, the potential for such an event to occur or for a child to feel conflicted about what to do if requested to give evidence is damaging in

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and of itself, and should be considered and covered by law.

Some might argue that the child-parent relationship is worthy of

protection, but that the adult child-parent relationship is potentially a privilege of another color. Pitting an adult child against a parent or vice versa, absent a waiver of privilege or an exception to it, is repugnant to the types and kinds of supportive relationships that we should be encouraging.

Sensational cases present unforeseen opportunities to examine society's values, priorities and commitments. If we are truly interested in "the best interest of the child," the time is now ripe for legislative intervention and protection of basic child-parent behavioral relations: communication. ■